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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 78-1715

DONNIE FRANKLIN COLLUM
AND
SCOTTY LYNN COLLUM

Petitioners

VERSUS

STATE OF LOUISIANA

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

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Petitioners

VS.
STATE OF LOUISIANA,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

Petitioners pray that a Writ of Certiorari issue to review the Judgments of the Supreme Court of Louisiana entered November 13, 1978, rehearing denied, December 14, 1978, and the decision of the Supreme Court for the State of Louisiana entered April 27, 1979, refusing a Petition for Certiorari, Mandamus and Prohibition to review the ruling of the Court of Appeal, First Circuit, for the State Louisiana, dated January16, 1979.

CITATION TO OPINION BELOW

The opinion of the Supreme Court of Louisiana in STATE OF LOUISIANA VS. DONNIE FRANKLIN COLLUM is reported at 365 So.2d 1272 (La.1978) and is set out in ***Appendix A.*** attached hereto. The original opinion of the Court of Appeal of Louisiana, First Circuit, in STATE OF LOUISIANA IN THE INTEREST OF SCOTTY LYNN COLLUM, is reported at 364 So.2d 166 (La. App. 1st Cir. 1978) and is set out in ***Appen-***

dix B, attached hereto. The opinion of the Court of Appeal of Louisiana, First Circuit, in STATE OF LOUISIANA IN THE INTEREST OF SCOTTY LYNN COLLUM, on rehearing, is reported at 368 So.2d 460, (La. App. 1st Cir. 1979) and is set out in *Appendix C.* attached hereto. The decision of the Louisiana Supreme Court denying Certiorari in STATE OF LOUISIANA IN THE INTEREST OF SCOTTY LYNN COLLUM is, at this date, unreported, but is contained in Number 64,336 of the docket of the Supreme Court of the State of Louisiana, and appears in the Order of that Court in *Appendix D*, attached hereto.

JURISDICTION

The judgment of the Supreme Court of Louisiana as it pertains to Petitioner, DONNIE FRANKLIN COLLUM, was entered on November 13, 1978, and a timely Petition for Rehearing was denied on December 14, 1978. Petitioner, DONNIE FRANKLIN COLLUM, sought and obtained from this Honorable Court an Order extending the time to file a Petition for a Writ of Certiorari to May 13, 1979. (See Appendix E)

The first Judgment of the Court of Appeal of Louisiana, First Circuit, in STATE OF LOUISIANA IN THE INTEREST OF SCOTTY LYNN COLLUM, was entered on October 9, 1978. The second judgment of the Court of Appeal of Louisiana, First Circuit, on rehearing, in STATE OF LOUISIANA IN THE INTEREST OF SCOTTY LYNN COLLUM, was entered on January 16, 1979. The Judgment of the Supreme Court of the State of Louisiana, denying Petitioner's Application for Writs of Certiorari or of Review was entered April 27, 1979.

Jurisdiction of this Court is invoked under 28 U.S.C.Section 1257 (3), Petitioners having asserted below and they assert in this Court deprivation of rights secured by the Constitution of the United States of America.

QUESTIONS PRESENTED

1. Whether the refusal of the Trial Courts to suppress confessions and statements given by Petitioners, juveniles. fifteen (15) years of age and fourteen (14) years of age and having mental ages of between seven (7) and ten (10) years. which statements were given in complete isolation from any attorney or an adult interested in the welfare of said juveniles who had been fully advised of the rights of juveniles. and after hours of confinement violates the Fifth and Fourteenth Amendments to the Constitution of the United States ?

2. Whether the refusal of the Louisiana Supreme Court and the Court of Appeal, First Circuit, to apply the Rule of *STATE IN THE INTEREST OF DINO*, 359 So.2d 586 (La. 1978) (which Rule prevents the use of statements or confessions taken from a juvenile unless that juvenile actually had consulted with an attorney or an adult interested in the welfare of the juvenile before the waiver, which adult or attorney had been fully advised of the rights of the juvenile). to the confessions taken from Petitioners because said confessions were taken prior to the date of the decision in *STATE IN THE INTEREST OF DINO, Supra*, violates the Fifth and Fourteenth Amendments to the Constitution of the United States?

CONSTITUTIONAL AND STATUTORY

PROVISIONS INVOLVED

This case involves the following Amendments to the Constitution of the United States:

Amendment V. Capital Crimes; Double Jeopardy; Self-Incrimination; Due Process; Just Compensation for Property

"No Person shall be held to answer for a capital, or

otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War of public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Amendment XIV, Section 1
CITIZENSHIP RIGHTS NOT TO BE ABRIDGED BY STATES

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

This case also involves the following provisions of the Constitution of the State of Louisiana of 1974:

Article 1, Section2
DUE PROCESS OF LAW

"No person shall be deprived of life, liberty or property, except by due process of law."

Article 1, Section 3
RIGHT TO INDIVIDUAL DIGNITY

"Section 3. No person shall be denied the equal protection of the laws. no law shall discriminate against a person because of race or religious ideas, beliefs or affiliations. No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition or political ideas or affiliations. Slavery and involuntary servitude are prohibited, except in the latter case as punishment for crime."

Article 1, Section 13
RIGHTS OF THE ACCUSED

"Section 13. When any person has been arrested or detained in connection with the investigation or commission of any offense, he shall be advised fully of the reasons for his arrest or detention, his right to remain silent, his right against self-incrimination, his right to the assistance of counsel and, if indigent, his right to court appointed counsel. In a criminal prosecution, an accused shall be informed of the nature and cause of the accusation against him. At each stage of the proceedings, every person is entitled to assistance of counsel of his choice, or appointed by the Court if he is indigent and is charged with an offense punishable by imprisonment. The legislature shall provide for a uniform system for securing and compensating qualified counsel for indigents."

Article 1, Section 16
RIGHT TO A FAIR TRIAL

"Section 16. Every person charged with a crime is presumed innocent until proven guilty and entitled to a speedy, public and impartial trial in the Parish where the offense or an element of the offense occurred, unless venue is changed in accordance with law. No person shall be compelled to give evidence against himself. An accused is entitled to confront and cross-examine the witnesses against him, to compel

the attendance of witnesses, present a defense, and to testify in his own behalf."

STATEMENT OF THE CASE

This is a petition for Writ of Certiorari to review the judgment of the Supreme Court of Louisiana, entered November 13, 1978, timely hearing denied December 14, 1978, affirming Petitioner, DONNIE FRANKLIN COLLUM'S, conviction. In addition, this Petition seeks Writ of Certiorari to review the Judgment of the Court of Appeal of Louisiana, First Circuit, entered January 16, 1979, affirming Petitioner, SCOTTY LYNN COLLUM'S, adjudication as a delinquent and the Judgment of the Supreme Court of Louisiana, entered April 27, 1979, refusing to grant Writ of Certiotari or Review of the Judgment of the Court of Appeal of Louisiana, First Circuit.

Petitioner, DONNIE FRANKLIN COLLUM, a fifteen (15) year old at the time of the alleged crime, was charged with four (4) separate counts of first degree murder. Petitioner, SCOTTY LYNN COLLUM, fourteen (14) years old at the time of the alleged crime, was charged with delinquency by having committed four (4) separate murders. Trial counsel filed on behalf of both Petitioners, Motions to Supress Statements, Confessions and Evidence Resulting Therefrom. Evidentiary Hearings were conducted on those Motions, and they were denied by the Trial Judges. Subsequent to those denials, as a result of plea bargaining, Petitioner, DONNIE FRANKLIN COLLUM, entered a plea of "guilty" to four (4) separate charges of second degree murder, with full resevation of his rights to appeal the Judgment of the Trial Court overruling the Motion to Suppress Evidence. As a result of the four (4) guilty pleas by DONNIE FRANKLIN COLLUM, he was sentenced by the Trial Court to four (4) consecutive life terms, without benefit of parole, probation or suspension of sentence for a period of FORTY (40) years.

Subsequent to the denial of his Motion to Supress, Petitioner, SCOTTY LYNN COLLUM, as a result of plea bargaining, entered a plea of "guilty" to being a juvenile delinquent by the commission of four (4) separate charges of second degree murder, with full reservation of his rights to appeal the Judgment of the Trial Court overruling the Motion to Suppress Evidence. As a result of the guilty plea entered by PETITIONER, SCOTTY LYNN COLLUM, he was committed to the Department of Corrections of theState of Louisiana for an indefinite period of time not to exceed his twenty-first (21st) birthday.

In either May or June, 1977, Jessie Collum, his wife and two children were killed in Lafourche Parish, Louisiana. Petitioner, DONNIE FRANKLIN COLLUM, (at the time of the incident, fifteen (15) years of age) and his brother, SCOTTY LYNN COLLUM, (at the time of the incident, fourteen (14) years of age), were arrested at the home of their mother in Victorville, San Bernadino County, California, at approximately 2:30 o'clock, P.M. on June 3, 1977. At the time of their arrest, the two juveniles and their mother were advised that they were being arrested on charges of "Auto Theft" stemming from the fact that the boys had been found in possession of Jessie Collum's car in Benson, Arizona, without his authorization. Jessie Collum was the natural father of Petitioners. Despite these representations ot Petitioners, arresting officers were fully aware that the juveniles were wanted in connection with the killings described above.

At the time of their arrest, Petitioners were handcuffed, placed in the rear seat of a police unit, and, while the unit was turning around and driving off, they were allegedly read their *Miranda* rights from a card by the same officer who was turning the police unit around and driving it to the police station. Thereafter, the juveniles were "reminded" of their *Miranda* rights, but they were not repeated prior to Petitioners' giving statements to the California Police.

Petitioners were taken to the Sheriff's Office substation, a police facility occupied by uniformed policemen and containing cells for the incarceration of prisoners and further containing a number of adult prisoners and offenders. At the police station, the boys were handcuffed to chairs, first in an interrogation room occupied by both of them, and later, in separate interrogation rooms where they were left for a period of time. (Donnie Collum transcript, Volume 2, Pages 36 and 118).

During the period from approximately 2:30 o'clock, P.M. and 9:00 O'clock, P.M., both Petitioners were questioned at the various times. Initially, they were questioned about the automobile which had belonged to their father. Police officers indicated that Petitioners were never again advised of their *Maranda* rights, but they were "reminded" of those rights. Both Petitioners ultimately admitted involvement in the murders which became the subject of the interrogation. The record reveals that Petitioner, DONNIE COLLUM, upon receiving information of the death of his father, became "very nervous" and initially denied any involvement in the deaths. (Scotty Collum Transcript, Vol. 1, Pages 104 through 113. Donnie Franklin Collum Transcript, Vol. 11, Pages 10 through 15).

Petitioner, DONNIE FRANKLIN COLLUM, was interrogated at various times and during one interrogation, a short portion of a tape of a statement taken from , his brother SCOTTY, was played for him. DONNIE COLLUM then agreed to make a statement which was his first confession. (Donnie Collum Transcript, Vol. II, Page 18). Intermittent questioning of Donnie Collum continued, but Petitioners' mother was not permitted to be present or to see either Petitioner until after the completion of all interrogations which resulted in their confessions. She did not see either Petitioner until approximately 9:00 o'clock, P.M. or 9:30 o'clock, P.M. on June 3, 1977. (Donnie Collum Transcript, Vol. II, Page 81).

Petitioners' mother was never apprised of the fact that the

juveniles were being arrested for the alleged killing of Jessie Collum and his family. She testified that she came to the police station within thirty minutes after the arrest of her sons, but was prevented from seeing them or from being with them throughout the interrogation. As a matter of fact, she was told to "go home" and wait until a police officer came to her house to advise her that she could talk to her sons. (Donnie Collum Transcript, Vol. II, Page 71 and 89; Vol. III, Pages 243).

After Petitioners' mother was permitted to meet with them at approximately 9:30 o'clock, P.M. on June 3, 1977 (subsequent to full confessions), they were again questioned outside of the presence of their mother or any attorney by Louisiana Police Officers. This questioning resulted in additional confessions. (Donnie Collum Transcript, Vol. II, Page 42).

Petitioner, DONNIE FRANKLIN COLLUM, testified during a Hearing on a Motion to Suppress Evidence that he did not realize that he did not have to talk with the police, that he did not understand what the right to remain silent meant, or that he was entitled to have an attorney present when he made statements. He further indicated that a person whom he believed to be a jailer told him that he would probably get, at the most, three years for whatever he was charged with. (Donnie Collum Transcript, Vol. III, Pages 316 and 323).

While Petitioners' appeals were pending on direct appeal before the Court of Appeal of Louisiana, First Circuit, and the Louisiana Supreme Court, and prior to any oral argument thereon, on June 15, 1978, the Louisiana Supreme Court decided in *STATE IN THE INTEREST OF DINO, supra,* that:

> ". . . The purported waiver (of rights) by a juvenile must be adjudged ineffective upon the failure by the State to establish any of three (3) pre-requisites to waiver, viz, that the juvenile acutally consulted with an attorney or an adult

before waiver, that the attorney or adult consulted with was interested in the welfare of the juvenile, or that, if an adult other than an attorney was consulted, the adult was fully advised of the rights of the juvenile."
(Parentheses added)

Despite the admisssion of the Louisiana Supreme Court that the confessions extracted from Petitioners did not meet the requirement of *Dino*, the Court determined that the *"Dino"* rule would affect only cases in which the Trial began after June 15, 1978. *(State Vs. Collum, Supra,* at 1277)

FEDERAL QUESTIONS RAISED AND DECIDED BELOW

I.

Prior to Trial, Petitioners moved to suppress the confessions, statements and evidence which was obtained therefrom and upon which their ultimate convictions were based on the grounds that said confessions and statements were not given freely and voluntarily and thus, their rights against self-incrimination as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution were violated. (Scotty Collum Transcript, Vol. I, Page 27. Donnie Collum Transcript, Vol. I, Page 11). In substance, Petitioners took the position that the conduct of interrogation of a juvenile, even younger in mentality than his physical years, without any advice from parents or attorneys, in isolation and under the pretense that he was being held for a relatively minor charge, constituted a de facto compelling of self-incrimination. The contention was that the confessions and statements received by law enforcement officials were not given freely and voluntarily in view of the youth of Petitioners, the seriousness of the crime for which they were in fact being held, and in view of the conditions under which they were interrogated. The Trial Courts denied both Motions to Suppress. (Scotty Collum Tanscript, Vol. II, Pages 293 through 312. Donnie Collum Transcript, Vol. I, Pages 40

through 53).

II.

Subsequent to Petitioners' convictions, after lodging of appeals with the Court of Appeal of Louisiana, First Circuit, and the Louisiana Supreme Court, but prior to oral argument thereon or a decision by that Court, the Louisiana Supreme Court rendered its decision in ***STATE IN THE INTEREST OF DINO*** , ***Supra,*** Which, in summary, determined that the confession of a juvenile could not be considered free and voluntary, and thus , admissible, and, therefore, could not be considered acceptable under the Fifth Amendment to the United States Constitution and under Article I, Section 2, 3, 13 and 16 of the Louisiana Constitution of 1974, unless the juvenile's waiver of rights occurred after full consultation with parents and/or a guardian and/or an attorney interested in the welfare of the juvenile and fully apprised of his rights. Petitioners had made precisely that argument in the Trial Court below on the Motions to Suppress Evidence which were filed therein and they renewed that argument before the Louisiana Supreme Court and the Court of Appeal of Louisiana, First Circuit, subsequent to its decision in *Dino, Supra.* The Trial Courts rejected these arguments by refusing to grant the Motions to Suppress Evidence. Appellate Courts affirmed.

III.

In the course of their arguments, both orally and in brief, before the Louisiana Supreme Court, Petitioners contended that the Rule as enunciated in ***STATE IN THE INTEREST OF DINO, Supra,*** should be applied retroactively, at least to the cases involving Petitioners. This argument was founded on the ground that the Rule enunciated in *DINO* went to the integrity of the fact finding process and would not work a severe hardship on law enforcement officials, and further on the basis that *Dino* was decided before Petitioners' convictions had

become final, in that their appeals were pending and not yet finally determined by the highest Courts of Appeal of Louisiana. Additionally, Petitioners asserted to the Louisiana Supreme Court that it had applied the *Dino* rule to cases in which Defendants were convicted prior to the decision in *Dino* (See *STATE IN THE INTEREST OF LEANDER JONES*, 360 So.2d 1181 (La. 1978), and a refusal by the Louisiana Supreme Court to apply that Rule to Petitioners' case constituted a refusal to grant to them the equal protection of the laws and due process of the law required by Amendments Five and Fourteen of the United States Constitution and Article 1, Section 2, 3, 13 and 16 of the Constitution of the State of Louisiana of 1974. The Louisiana Supreme Court and the Court of Appeal of Louisiana, First Circuit, refused to apply the constitutional doctrine established in *STATE IN THE INTEREST OF DINO, Supra.* (See *STATE V, COLLUM, Supra,* and *STATE IN THE INTEREST OF COLLUM, Supra,* both annexed as appendices).

ARGUMENT AND REASONS FOR GRANTING THE WRIT

1. This Court should grant Certiorari to consider whether confessions extracted from juveniles fifteen and fourteen years of age and having mental ages of between seven and ten years, without consultation with an attorney or an adult interested in the welfare of said juveniles, while said juveniles were held in complete isolation from all other persons and after having been read their "rights" only one time under confusing circumstances should be suppressed.

It is axiomatic that the Fifth Amendment to the United States Constitution prohibits the use of confessions obtained from a Defendant unless those confessions are given freely and voluntarily. This Court has applied that rule to the states under the fourteenth Amendment to the United States Constitution and has specifically set forth a requirement that a Defendant be fully apprised of specific rights prior to the taking of any

statements or confessions. *MIRANDA VS. ARIZONA*, 384 U.S. 436, 86 S. Ct. 1602, 16 L.Ed. 2d 694 (1966). The people of the State of Louisiana have adopted in their Constitution the requirements of *MIRANDA* at Article I, Section 13 thereof.

The question of the propriety of a confession or statement taken from a juvenile is far more critical than that involving an adult. The Supreme Court of the State of Louisiana has recognized that fact in *STATE IN THE INTEREST OF DINO, Supra,* by stating:

> "Assessments of how the 'totality of circumstances' affected a juvenile in a particular case can never be more than speculation. Furthermore, whatever the background of the juvenile interrogated, assistance of an adult acting in his interest is indispensable to overcome the pressures of the interrogation and to ensure that the juvenile knows he is free to exercise his rights at that point in time." 359 So.2d at 592.

Similarly, this Honorable Court has refused to accept as free and voluntary, confessions from a juvenile when the slightest question as to the purported waiver exists. In *GALLEGOS VS. STATE OF COLORADO*, 370 U.S. 49, 82 S. Ct. 1209; 8 L.Ed. 2d 325 (1962), subsequent to a juvenile's arrest, the following events took place: (1) the child's mother attempted to see him; (2) The child's mother was not permitted to see the child; (3) The child was held in custody for a period of approximately seven days; and (4) On January 7, the child signed a full confession. In overturning the confession, the United States Supreme Court made the following observations:

> "The fact that Petitioner was only fourteen years old puts this case on the same footing as *HALEY VS. OHIO*, 332 U.S. 596; 68 S.Ct. 302; 92 L.Ed. 224. There was here no evidence of prolonged questioning. But the five-day detention-during which time the boy's mother unsuccess-

fully tried to see him and he was cut off from contact with any lawyer or adult advisor – gives the case an ominous cast. The prosecution says that the boy was advised of his right to counsel, but that he did not ask either for a lawyer or for his parents, but a fourteen year old boy, no matter how sophisticated, is unlikely to have any conception of what will confront him when he is made accessible only to the police. That is to say, we deal with a person who is not equal to the police in knowledge and understanding of the consequences of the questions and answers being recorded and who is unable to know how to protect his own interests or how to get the benefits of his constitutional rights. . . He cannot be compared with an adult in full possession of his senses and knowledgeable of the consequences of his admissions. He would have no way of knowing what the consequences of his confession were without advice as to his rights – from someone concerned with securing him of those rights – and without the aid of more mature judgment as to the steps he should take in the predicament in which he found himself. A lawyer or an adult relative or friend could have given the Petitioner the protection which his own maturity could not. Adult advice would have put him on a less unequal footing with his interrogators. Without some adult protection against this inequality, a fourteen year old boy would not be able to know, let alone assert, such constitutional rights as he had. To allow this conviction to stand would, in effect, be to treat him as if he had no constitutional rights." 370 U.S. at 52

Similarly, in *HALEY VS. STATE OF OHIO*, 332 U.S. 596, 68 S. Ct. 302; 92 L.Ed. 224 (1948) this Court declared that when a "mere child" is involved, ". . . special care in scrutinizing the record must be used". 332 U.S. at 599 The Court amplified that statement by explaining that:

"Age fifteen is a tender and difficult age for a boy of any

race. He cannot be judged by the more exacting standards of maturity. That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens. This is a period of great instability which the crisis of adolescence produces. A fifteen year old lad, questioned through the dead of night by relays of police, is a ready victim of the inquisition. Mature men, possibly, might stand the ordeal from midnight to 5:00 o' clock, A.M. But we cannot believe that a lad of tender years is a match for for the police in such a contest." 332 U.S. at 599-600

In the case now before this Court, in connection with the interrogation of SCOTTY COLLUM, police officers who testified during the Motion to Suppress Evidence went to great length to make the period of interrogation appear to have been broken into small segments. The bar fact remains, however, that SCOTTY COLLUM, a fourteen (14) year old youth, was imprisoned, handcuffed and whisked from his mother and family at approximately 2:30 o'clock, P.M. on June 3, 1977, and was not permitted to see his mother again until 9:30 o'clock, P.M., some seven (7) hours later, and following the giving of a confession. (Scotty Collum Transcript, Vol. I. Page 55 and Vol. II, Page 2. Subsequent to that visit with his mother at 9:30 o'clock, P.M., after having given a confession, Scotty was retained in confinement until a second statement was taken from him at approximately 1:00 o'clock, A.M. on the following day, some ten and one-half hours after his arrest. (Scotty Collum Transcript, Vol. I, Page 172). During the entire time, Scotty was apparently confined to one small room, for a period of time handcuffed to a chair, and deprived of consultation or visitation with any family, parents, attorney or other adult, except the police officers by whom he was being questioned.

The exact procedure was following with regard to the interrogation of DONNIE FRANKLIN COLLUM, Scotty's fifteen year old brother. In addition to the interrogations conducted

between 2:30 o'clock, P.M. and 9:00 o'clock, P.M., additional interrogations were conducted from midnight until 2:00 o'clock, A.M. the following day. (Donnie Collum Transcript, Vol. II, Page 42). In addition, DONNIE COLLUM testified during the Motion to Suppress Evidence that he did not realize that he did not have to talk with the police and he further indicated that he did not understand what the right to remain silent meant and that he was entitled to have an attorney present when he made statements. (Donnie Collum Tanscript, Vol. III, Pages 312 through 351). Moreover, it is apparent that DONNIE COLLUM'S statements were influenced by a person whom he believed to be a jailer and who told him that he would probably get, at the most, three years. (Donnie Franklin Collum Transcript, Vol. III, Page 316 and 323).

The Louisiana Supreme Court explained in *STATE IN THE INTEREST OF DINO, Supra,* that:

> "Although the *Maranda* Court did not express itself specifically on the special needs of juveniles confronted with police interrogation, the reasons given for making the warnings an absolute pre-requisite to interrogation point up the need for an absolute requirement that juveniles not be permitted to waive constitutional rights on their own." 359 So.2d at 591.

In striking down the confession obtained in *HALEY VS. STATE OF OHIO, Supra,* this Honorable Court assessed the facts and circumstances apparent on the record and comment ed:

> "No friend stood at the side of this fifteen year old boy as the police, working in relays questioned him hour after hour, from midnight until dawn. No lawyer stood guard to make sure that the police went so far and no further, to see to it that they stopped short of the point where he became the victim of coercion. No counsel or friend

> was called during the critical hours of the questioning." 332 U.S. at 600

Similarly, diring the questioning of SCOTTY and DONNIE COLLUM, no one but the police were present for hours. The young boys were initially misled by the police (as was their mother) to believe that they were being taken into custody only for the investigation of the unauthorized use of an automobile. The trickery employed by the police in this situation would make suspect statements taken from an adult, let alone children as in the case at bar.

It is suggested to this Court that the confessions obtained from DONNIE and SCOTTY COLLUM are best described in the terms employed by this Court in *HALEY VS. STATE OF OHIO, Supra,* at pages 600 and 601;

> "The age of Petitioner, the hours when he was grilled, the duration of his quizzing, the fact that he had no friend or counsel to advise him, the callous attitude of the police towards his rights combined to convince us that this was a confession wrung from a child by means which the law should not sanction. Neither man nor child can be allowed to stand condemned by methods which flout constitutional requirements of due process of law."

This Court continued in *HALEY*

> "But we are told that this boy was advised of his constitutional rights before he signed the confession and that, knowing them, he nevertheless confessed. That assumes, however, that a boy of fifteen, without aid of counsel, would have a full appreciation of that advice and that on the facts of this record he had a freedom of choice. We cannot indulge those assumptions. Moreover, we cannot give any weight to recitals which merely formalize constitutional requirements. Formulas of respect for consti-

tutional safeguards cannot prevail over the facts of life which contradict them. They may not become a cloak for inquisitorial practices and make an empty form of the due process of law for which free men fought and died to obtain." 332 U.S. at 601

Here, as in *HALEY*, police officers merely "formalized" the constitutional requirements for advice of rights. As a matter of fact, the rights of the juveniles were read to them one time only, immediately after their sudden and unexpected apprehension, in the back of a moving police car, surrounded by police officers, and by an officer who allegedly was driving the vehicle and turning it around at the same time he was reading the rights from a card. (Scotty Collum Transcript, Vol. I, Page 99). It is apparent that no one read or explained their rights to these children after the initial reading described above. This is admitted by the police officers throughout their testimony. This was true, despite the fact that many hours had elapsed since that traumatic arrest at their mother's home. (Scotty Collum Transcript, Vol. I, Page 75). It is submitted that under the conditions described throughout the transcript by the officers themselves, fifteen and fourteen year old boys could not be expected to absorb and properly comprehend and understand the rights of which they had been "advised" in the midst of the sudden shock of their arrest and their surroundings.

This Court is asked to seriously question the Trial Court's apparent conclusion that no inducements, promises or threats or other improper tactics were employed by police officers. In support of this position, Petitioners invite the Court's attention to the obvious attempts at deceit by police officers. Note their conscious avoidance of informing the children themselves or their mother of the real reason for their arrest. (Scotty Collum Transcript, Vol. I, Page 72).

If all of the safeguards which the police officers contended

they utilized were, in fact employed, and if the juveniles truly were not threatened, induced, or in any other way improperly persuaded to confess, why were the entire interviews which were conducted not included on the tapes which the officers made? Note that Detective Woodrum admits that although the interview with SCOTTY COLLUM, which he conducted, took between two and two and one half hours, he did not begin the tape until Scotty "admitted his participation in the homicide." (Scotty Collum Transcript, Vol. I, Page 65). Interestingly, Sergeant Sodaro finally confessed that he did not begin to tape record the interview with Scotty until they "went over it a second time". (Scotty Collum Transcript, Vol. I, Page 94).

Sergeant Sodaro declared his attempts to "explain" Scotty's "fallacies" in his statement about the auto in which he had been riding and Sergeant Sodaro claimed that he "explained" the California juvenile law to this child, but he failed to explain why he did not tape any of these discussions. (Scotty Collum Transcript, Vol. I, Page 112). In addition, Sergeant Sodaro unwittingly admitted that he did not explain to SCOTTY COLLUM that his statement could be used against him. (Scotty Collum Transcript, Vol.I, Page 113).

Petitioners ask this Court to question seriously the motives of the officers involved as they visited these juveniles' mother at 3:00 o'clock, A.M. on June 4, 1977, to explain to her why it would be "economically better" if she did not obtain an attorney to represent her and her son at the extradition proceeding. (Scotty Collum Transcript, Vol. I, Page 113 and 118). Petitioners ask that this Court question the veracity and the honesty of the police officers who claim they advised Scotty of his rights between midnight and 1:00 o'clock, A.M., on June 4, 1977, but failed to include that conversation on the tape recording of the interview. (Scotty Collum Transcript, Vol. I, Page 176 and 177).

Petitioners ask this Court to question seriously the motives

of police officers who informed the mother of fifteen and fourteen year old boys whom they have apprehended in connection with four (4) murders, That they merely wanted to ask the boys a few routine questions about the possession of their father's automobile and that she should "go back home" until the police sent someone to get her. (Scotty Collum Transcript, Vol.II, Page 224 and 225). Finally, Petitioners urge that this Court condemn both the motives and the practices resulting therefrom of police officers who attempt, through a veiled threat of the hell hole known as "Glen Helen" to dissuade these childrens' mother from challenging extradition. (Scotty Collum Transcript, Vol. II, Page 228 and 229).

These isolated vignettes appearing fleeting throughout the record should be considered further in the light of the testimony of the juveniles' mother which described the "roomful" of police officers which she encountered when she arrived at the police station (Scotty Collum Transcript, Vol. II, Page 232), the bruised wrists of one of her sons which she observed (Scotty Collum Transcript, Vol. II, Page 230), and the spontaneous comment of Scotty, "Mother, if they ask you questions for that long, . . . you'd say you'd done it too". (Scotty Collum Transcript, Vol. II, Page 241).

This Court's great concern for confessions taken from juveniles is reflected in its decision in *IN RE: GAULT*, 387 U.S. 1, 87 S. Ct. 1428, 18 L.Ed. 2d 527 (1967). Therein, this Court stated:

> "We appreciate that special problems may arise with respect to waiver of the privilege by or on behalf of children, and that there may well be some differences in technique - but not in the principle - depending on the ***age of the child*** and the ***presence and competence of parents.*** The participation of counsel will, of course, assist the police, Juvenile Courts and Appellant Tribunals in administering the privilege. If counsel was not present for some permissible reason when an admission was obtained, the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ***ignorance of rights*** or of adolescent fantasy, fright or despair. (Emphasis added). 387 U.S. at 55

In short, this Court has consistently looked to the presence of competent adults and/or legal counsel in order to determine whether a juvenile's confession is free and voluntary. This Court has never applied the bare standards for determining the propriety of an adult confession. This Court has correctly recognized that a child of tender years lacks the ability to make a knowing and free choice, especially when the crime is as serious as that now before this Court.

In *WEST VS. UNITED STATES*, 399 F.2d 467 (1968), certain specific factors were set forth to assist in resolving whether a waiver of rights on the part of a minor was valid. Those factors include: (1) The age of the accused; (2) The education of the accused; (3) The knowledge of the accused as to both the substance of the charge, if any has been filed, and as to the nature of his rights to consult with an attorney and remain silent; (4) Whether the accused is held incommunicado or allowed to consult with relatives, friends or an attorney; (5) Whether the accused was interrogated before or after the formal charges had been filed and the method used in interrogation; (6) The length of the interrogation; (7) Whether the accused refused to voluntarily give statements on prior occasions; and (8) Whether the accused has repudiated an extrajudicial statement at a later date.

In the case before this Court, the juveniles at fifteen (15) and fourteen (14) years of age, must be considered at the lower end of the age spectrum. In addition, at the hearing on the insanity issue (Donnie Collum Transcript, Vol. III, Page 5), Dr. Robicheaux stated that it was his impression that, Donnie was quite dull mentally and roughly evaluated his mental age

at seven (7) to ten (10) years. Thus, a special danger arose with the waiver of rights by him without advice of parents, counsel, or other adult interested in his welfare or fully apprised of his rights.

The second factor listed in the cited case is the knowledge of the accused as to both the substance of the charge, if any has been filed, and the nature of his rights to consult with an attorney and remain silent. Neither DONNIE COLLUM nor SCOTTY COLLUM was ever advised of the nature of the actual charges pending against them. These children and their mother were told merely that they were being arrested for "auto theft". (Donnie Collum Transcript, Vol. II, Pages 71, 89; Vol. III, Pages 239, 248, 249, and 276). It is apparent, therefore, that only after the confessions were obtained, did the children and their mother learn of the actual charges for which they were being detained.

It is also apparent that DONNIE and SCOTTY COLLUM were held "incommunicado" for the entire period until they made confessions. A reading of the record in the case before this Court reveals that neither child saw anyone but his interrogator from 2:30 o'clock, P.M. on June 3, 1977, until 9:30 o'clock, P.M. on that date, The only persons whom either saw finally at 9:30 o'clock, P.M. after giving confessions, were their mother and sister. It was obviously too late to obtain "advice of counsel" from anyone at that time.

The record reveals the glaring failure of the police interrogators to remind either juvenile or to determine from them whether they wished to obtain advice from their mother. Officer Sodaro admitted that the children's mother may have asked to see her sons before the interviews, but he conceded that, had she asked to see them, she would not have been permitted to see them until they were "through with the interview". (Donnie Collum Transcript, Vol. II, Page 81).

In addition, Detective Sodaro admitted that all indications given to the juveniles and their mother were that they were being arrested for grand auto theft. (Donnie Collum Transcript, Vol. II, Page 71). Officer Woodrum also admitted that he did not ask the children's mother if she wished to be present during the interview. (Donnie Collum Transcript, Vol. II, Page 47). These questionable practices and omissions by California Police Officers were later repeated or utilized by Louisiana Officers upon their midnight arrival.

Thus, the conclusion becomes inescapable that the purported waiver of rights on the part of the two juveniles before this Court cannot possibly withstand the tests that must be applied in such cases. It is submitted to this Court that the refusals of Trial Courts and Appellate Courts to suppress the confessions and all evidence obtained as a result therefrom directly violates the rights of these children as protected by the Constitution of the United States as clearly specified by this Honorable Court in the cases cited above.

II. This Court should grant Certiorari to consider whether the rule of the Louisiana Supreme Court to the effect that the purported waiver of rights by a juvenile will be considered ineffective upon the failure of the State to establish any of the three prerequisites to waiver. viz., that the juvenile actually consulted with an attorney or an adult before waiver, that the attorney or adult consulted was interested in the welfare of the juvenile, or that, if an adult other than an attorney was consulted, the adult was fully advised of the rights of the juvenile, should have been applied to the confessions obtained from Petitioners, although said confessions were taken prior to the decision by the Louisiana Supreme Court setting forth said rule.

At the outset, Petitioners submit to the Court that the Louisiana Supreme Court violated Petitioners' rights to due

process and equal protection of the laws by determining that to apply the rule established in *STATE IN THE INTEREST OF DINO Supra* to the case at bar would require giving total retroactive effect to the *DINO* rule. By virtue of prior decisions of the Louisiana Supreme Court and especially its decision in *STATE OF LOUISIANA IN THE INTEREST OF LEANDER JONES, Supra,* (See Appendix F) it is apparent that a true issue of retroactivity did not exist or that the Louisiana Supreme Court had given partial retroactive effect to the *DINO* rule in some instances but not in others in a totally unjust and unequal manner.

The Louisiana Supreme Court rendered its decision in *STATE IN THE INTEREST OF DINO, Supra,* While the appeals of DONNIE and SCOTTY COLLUM were pending The Collum appeals presented to the Louisiana Supreme Court the identical issues considered and decided in the *DINO* case.

The Louisiana Supreme Court also disposed of issues identical to those presented in*DINO* and in the instant case in the matter entitled *STATE OF LOUISIANA IN THE INTEREST OF LEANDER JONES,Supra,* decided July 3, 1978. The following time elements were applicable in the *JONES* case: The date of the crime was November 3, 1977. Between that date and April 18, 1978, a Motion to Suppress A Confession given by the juvenile was filed, heard and denied by the Trial Court. An appeal was taken to the First Circuit of Appeal which Court upheld the Trial Court's decision.

On April 18, 1978, an Application for Writ of Certiorari was filed with the Louisiana Supreme Court, but no action was taken on that Application until July 3, 1978, subsequent to the *DINO* decision. On July 3, 1978, the Louisiana Supreme Court granted the Application for Writs in *JONES,* reversed the conviction of the Defendant, and remanded the case to the Court of Appeal of Louisiana for the First Circuit for "reconsideration in the light of *STATE IN THE INTEREST OF DINO"* 360 So.2d at 1181

The contentions raised by Petitioners in the Trial Court were to the effect that confessions obtained from Petitioners were inadmissible and could not be considered free and voluntary because neither parents nor any attorney interested in their welfare were present during the taking of those confessions. In a Memorandum in Support of the Motions to Suppress Evidence filed by Trial Counsel in the DONNIE FRANKLIN COLLUM matter, prior to a decision on the Motion to Suppress Evidence by the Trial Court, counsel stated, "We contend that a minor is without legal capacity to waive constitutional rights without the consent of his parents". (See Memorandum of Trial Counsel, Appendix G) Thus, the identical issues determined in the *DINO* case and in the *JONES* case were presented to the Louisiana Supreme Court prior to the *DINO* decision and, in fact, contemporaneously with the presentation of those issues in the *DINO* case.

This Honorable Court has consistently taken the position that even when a new rule of Court is to be applied prospectively only, the application of that rule will include cases pending on direct appeal. *LINKLETTER VS. WALKER,* 381 U.S. 618, 85 S.Ct. 1731, 14 L.Ed. 2d 601 (1965). See also, *UNITED STATES VS. SCHOONER PEGGY,* 1 Cranch 103, 2 L.Ed. 49 (1801).

Petitioner further suggests to this Court that the Louisiana Supreme Court failed to grant equal protection of the laws and to render to Petitioners due process of law in determining that an issue of retroactivity existed when the Louisiana Supreme Court decision in the instant case is considered in relation to its previous decisions. In *STATE VS. BECKERT,* 326 So.2d 494 (La. 1976), the issue presented to the Louisiana Supreme Court involved whether the Trial Court's failure to provide instructions to a jury concerning the law applicable to a verdict of "not guilty by reason of insanity" constituted reversal error. In *STATE VS BABIN,*319 So. 2d 367, (La. 1975). the Louisiana Supreme Court enunciated a new rule

concerning that principle. The ***BABIN*** decision was filed on July 25, 1975, and the Trial in the ***BECKERT*** case was completed on May 14, 1975, prior to the *BABIN* decision. In *BECKET*, at Page 495, Justice Dennis explained that, "Because the instant case was not final but on appeal pending a direct review at the time of the *BABIN* decision, we are arguably not presented with an issue of true retroactivity". Similarly, in *STATE VS. LIESK*, 326 So.2d 871 (La. 1976), on rehearing, the Court pointed out that it was not confronted with a question of whether *STATE VS. BABIN, Supra,* was retroactive, because the *LIESK* case was on appeal at the time of the decision in the *BABIN* case.

It is apparent that the identical set of facts as existed in *LIESK* and *BECKET* existed in the instant case when it was before the Louisiana Supreme Court. It is clear that while the Louisiana Supreme Court pondered the questions raised in *STATE IN THE INTEREST OF DINO, Supra,* the DONNIE and SCOTTY COLLUM matters had been appealed to the highest Courts of Appeal in this State aand awaited those Court's decisions. Thus, the Louisiana Supreme Court was not presented with a question concerning the Trial and final conviction based upon a confession taken without following the rules enunciated in *DINO,* but, instead,with confessions which were challenged on the identical principles enunciated in *DINO* and which convictions were not finalized prior to the *DINO* decision.

Arguendo, should this Court decide that the question for consideration *is* one of retroactivity, it is submitted that the rule expressed in *DINO* must be applied, even retroactively, according to the requirements established by this Honorable Court and by the Louisiana Supreme Court. In summary, both the Louisiana Supreme Court and the United States Supreme Court have declared repeatedly that where a new rule goes "to the very integrity of the fact finding process . . ." it will be retroactive in effect. *STATE VS. LEISK, Supra,*

326 So.2d at 876. As was explained by Justice Dennis in his dissent in the case before this Court:

> "Under our established principles of interpretation, a new constitutional doctrine must be given complete retroactive effect when its major purpose is to overcome an aspect of the judicial proceeding which impairs its truth finding function and so raises serious questions about the accuracy of determinations of guilt in past Trials. State v. Swift, 363 So.2d 499 (La. 1978); State v. King, 347 So.2d 1108 (La. 1977); City of Baton Rouge v. Short, 345 So. 2d 37 (La. 1977); cf. Ivan v. City of New York, 407 U.S. 203, 92 S.Ct. 1951, 32 L.Ed 2d 659 (1972); Williams v. United States, 401 U.S. 646, 91 S. Ct. 1148, 28 L.Ed. 2d 388 (1971); Linkletter v. Walker, 381 U.S. 618, 85 S. Ct. 1731, 14 L.Ed. 2d 601 (1965)." *STATE VS. COLLUM, Supra,* p. 1281.

Similarly, this Honorable Court has explained that:

> "Where the major purpose of new constitutional doctrine is to overcome an aspect of the Criminal Trial that substantially impairs its truth-finding function and so raises serious questions about the accuracy of guilty verdicts in past trials, the new rule has been given complete retroactive effect". *WILLIAMS VS. UNITED STATES,* 401 U.S. 646, 653, 91 S.Ct. 1148, 28 L.Ed. 2d 388 (1971).

Certainly, it cannot be contended that the confessions obtained from Petitioners do not go to the integrity of the fact-finding process. It is apparent that the only "process" which would result in any "fact-finding" in the COLLUM matters involved the obtaining of their confessions. Thus, the question of freedom and voluntariness of their confessions goes directly to the integrity of that fact-finding process and the rule and requirement directed by the Constitution of the United States as explained by this Court and the Courts of the

State of Louisiana must apply to all cases, including those involving confessions obtained prior to the ruling in the *DINO* matter.

Thus, this Court stated in *IVAN VS. CITY OF NEW YORK*, 407 U.S. 203, 92 S. Ct. 1951, 32 L.Ed. 2d 659 (1972), "Winship expressly held that the reasonable doubt standard 'is a prine instrument of reducing the risk of convictions resting on factual error' ". 407 U.S. at 204 Similarly, in *TEHAN VS. SHOTT*, 382 U.S. 406, 86 S. Ct. 459, 15 L.Ed. 2d 453 (1965), this Court distinguished the right against self-incrimination (which does not necessarily touch upon the fact-finding process) from the prohibition against coerced confession (which it recognized clearly does touch upon the fact-finding process).

In his dissenting opinion in the case now before this Court, Louisiana Supreme Court Justice Tate declared at Page 1280,

> "The decision (DINO, *Supra*,) recognized the questionable voluntariness and truthfulness of the confession of a juvenile, who responds to interrogation under police custody without consultation with an attorney or an adult member of his family. The rule recognized the general unreliability of confessions of young persons (here, a fifteen year-old boy) responding to interrogation while surrounded by adult police officers and secluded in police custody from the advice and counsel of adults who care".
>
> (First Parenthesis added).

In his dissent, in *STATE V. COLLUM, Supra*, Louisiana Supreme Court Justice Dennis, at Page 1280 and 1281, squarely confronted the reasons which the majority of the Supreme Court in *DINO* gave for establishing the rule:

> "In *DINO*, we plainly stated three reasons why juveniles should not be allowed to waive their constitutional rights if their own. In addition to the main reason – to assure

> that the waiver itself is knowing, intelligent and voluntary - - we set forth two other reasons which relate to the voluntariness of the juvenile's confession, as well to his waiver of rights. We said that [i]f the juvenile decides to talk to his interrogators, the assistance of an adult can mitigate the dangers of untrustworthiness' and 'the likelihood that the police will practice coercion:' and that [t]he presence of such an adult can also help to guarantee that the accused gives a fully accurate statement and that the statement is rightly reported by the prosecution at Trial'. 359 So.2d at 592.

In considering the judicially established rule concerning admission of confessions, this Court recognized their clear involvement with the fact-finding process in *JACKSON VS. DENNO*, 378 U.S. 368, 383, 84 S. Ct. 1774, 12 L.Ed. 2d 908, (1964) When it explained:

> "The danger that matters pertaining to the Defendant's guilt will infect the jury's finding of fact bearing upon voluntariness, as well as conclusion upon that issue itself, is sufficiently serious to preclude their unqualified acceptance upon review in this Court, regardless of whether there is or is not sufficient other evidence to sustain a finding of guilt."

Likewise, in *TEHAN VS SHOTT, Supra*, this Court stated:

> "The basic purpose of a Trial is the determination of truth, and itis self-evident that to deny a lawyer's help throught the technical intricacies of a criminal Trial or to deny a full opportunity to appeal a conviction because the accused is poor is to impede the purpose and to infect a criminal proceeding with the clear danger of convicting the innocent . . . ***the same can surely be said of the wrongful use of a coerced confession***". (Emphasis added). 382 U.S. at 415

Similarly, in ***LINKLETTER VS. WALKER***, ***Supra***, this Court explained,

> "Moreover, coerced confessions are excluded from evidence because of a complex of values, ***BLACKBURN VS. ALABAMA***, 361 U.S. 199 4 L.Ed. 2d 242, 80 S.Ct. 274 (1960) including 'the likelihood that the confession is untrue' " 381 U.S. at 638

An important criterion in determining whether rules of constitutional law newly established by the Court will be applied retroactively is the extent of reliance on the old rule by law enforcement officials. In truth and in fact, the *DINO* decision did not set forth "new" rules. It reiterated the principles and requirements of the Louisiana Constitution in Article I, Section 13, concerning the protection against self-incrimination, and the rule set forth in ***MIRANDA VS. ARIzona***, ***Supra***, In *DINO*, the Court decided that a confession from a juvenile could not be considered free and voluntary unless the guidelines set forth therein were followed. The DINO decision interpreted Article I, Section 13 of the 1974 Louisiana Constitution and declared, "Finally, it appeared that, in fact, there was an intention by the convention to go beyond ***MIRANDA*** and to require more of the State regarding the precise issues now under discussion". *(DINO, **Supra*** at 590).

It is apparent from the Louisiana Supreme Court's decision in *DINO*, therefore, that "new rules" were not being set forth. In fact, the Louisiana Supreme Court was deciding that the law already in effect, embodied in the Louisiana Constitution, required that the practices outlined in *DINO* be followed.

Justice Dennis, at Page 1281 of his dissent in ***STATE VS. COLLUM, Supra*** added:

> "Moreover, other factors which weigh against retroactive effect of a new constitutional doctrine do not apply to

> *DINO*. The extent of reliance on the old rule by Louisiana law enforcement officials was not significant and *DINO'S* impact on the administration of justice will not be severe. . . . The practice now required by *DINO* was foreshadowded in numerous State and Federal decisions. . As early as 1948, the United States Supreme Court recognized that a juvenile's isolation from any friendly adult prior to police interrogation raised serious questions concerning volutariness. See ***HALEY VS. OHIO***, 332 U.S. 596, 68 S.Ct. 302, 92 L.Ed. 224 (1948) See also, ***GALLEGOS VS. COLORADO***, 370 U.S. 49, 82 S.Ct. 1209, 8 L.Ed. 2d 325 (1962).

Even the majority of the Louisiana Supreme Court in *DINO*, recognized that the rules set forth therein were not startlingly new and would not cause a grave burden on the administration of justice. In a concurring opinion in ***STATE OF LOUISIANA VS. ROSS***, 343 So. 2d 722 (La. 1977). at Page 729, Justices Tate and Calogero explained:

> "I would say that, in most instances that come before us, the investigating officers have taken the precaution to assure that a juvenile is allowed to confer with his parent or an older member of his family before his is permitted to waive the important Constitutional Right of Counsel. This helps to assure the fairness of his waiver and of his interrogation, and the voluntariness of any statement thereby obtained."

Thus, long before the *DINO* decision, the Louisiana Supreme Court had recognized that the more acceptable and prevalent practice involved the advice of parent and/or attorney to any juvenile prior to the obtaining of a confession. It is obvious that most well intentioned and knowledgeable law enforcement officers have followed this practice for some time. It is equally obvious that as far back in time as March of 1977, the Lousiana Supreme Court forwarned law enforcement

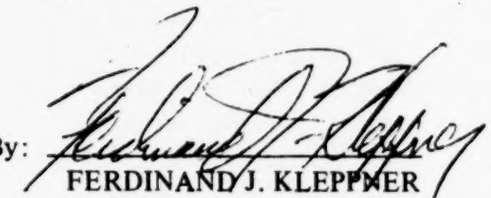
agencies of its inclination to require such protections for juveniles. That warning came from this Honorable Court even before that time, and as far back as 1948.

CONCLUSION

Petitioners pray that the Petition for Writ of Certiorari be granted to review the Judgments and opinions of the Supreme Court of the State of Louisiana and of the Court of Appeal of Louisiana, First Circuit,

Respectfully submitted,

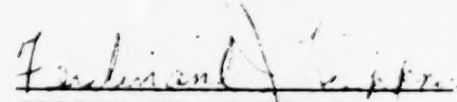
GRISBAUM & KLEPPNER

By: 
FERDINAND J. KLEPPNER
ATTORNEY FOR PETITIONERS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of this Petition for Writ of Certiorari were mailed to the following:

Three copies to the District Attorney of the Lafourche Parish, at his mailing address, District Courthouse, Thibodaux, La. 70301 and three copies to the Supreme Court of Louisiana at Supreme Court Building, 301 Loyola Ave., New Orleans, La. 70112.


FERDINAND J. KLEPPNER
ATTORNEY FOR PETITIONERS

APPENDIX A

STATE V. COLLUM

365 So.2d 1272 (La. 1978)

WEST KEY NUMBER SYSTEM

STATE OF LOUISIANA

V.

DONNIE FRANKLIN COLLUM.

Nos. 62157, 62158, 62159 and 62160.

Supreme Court of Louisiana.

Nov. 13, 1978

Dissenting Opinion Dec. 22, 1978

Dissenting Opinion Feb. 1, 1979

Juvenile was convicted in the 17th Jurdicial District Court, Parish of Lafourche, Bernard L. Knobloch and Walter, 1. Lanier, JJ., of second-degree murder and he appealed. The Supreme Court, Summers, J., held that: (1) Louisiana Supreme Court *Dino* decision holding that the confession of person under 17 years of age is inadmissible unless the juvenile actually consulted with an attorney or adult before waiving his right to silence would not be given retroactive effect, and (2) evidence sustained trial court's determination that, under the totality of the circumstances, the juvenile's confession was voluntary.

Affirmed.

Tate, J., dissented and filed an opinion.
Dennis, J., dissented and filed an opinion.
Dixon, J. dissented.

1. Courts Key 100(1)

Balancing process for determining whether decision should be applied retroactively is applicable only where the newly announced rule does not go to the very integrity of the fact-finding process; where the integrity of the fact-finding process is impaired, retroactivity will be imposed.

2. Criminal Law Key 1026

Where accused has pled guilty, only the jurisdiction of the court which received the plea is reviewable on appeal unless the plea of guilty has included a reservation, with the court's approval, of the right to appellate review of a nonjurisdictional ruling.

3. Criminal Law Key 527

Purpose of rule requiring suppression of any confession by a juvenile unless the juvenile has first consulted with an attorney or an adult before waiving his right to silence is to protect the juvenile's right against self-incrimination and to protect his right to counsel

4. Courts Key 100(1)

Louisiana Supreme Court's *Dino* decision that a confession of a person under 17 years of age is not admissible unless the juvenile actually consulted with an attorney or adult before waiving his right to silence will not be given retroactive application and will affect only those cases in which the trial began after June 15, 1978.

5. Criminal Law Key 527

Fact that, when arrested in California, juvenile was placed in a county jail, albeit in a deparate block in which his only contact with adult prisoners was with the one trusty who delivered his food and cleaned an adjoining cell, did not render the juvenile's confession involuntary. LSA-R.S. 13:1577; West's Ann.Cal.Welf. & Inst.Code, §216(b).

6. Criminal Law Key 414

Proper application of the totality of the circumstances test requires that the State sustain the burden of affirmatively proving that the waiver of rights was made freely and voluntarily, with an understanding of the consequences which might flow from such a waiver. LSA-R.S. 15:451.

7. Criminal Law Key 527

The age of a juvenile defendant is a factor which requires the court to give closer scrutiny to the confession than would ordinarily be required of an adult confession.

8. Criminal Law Key 531(3)

Evidence that 15-year-old juvenile had completed the ninth grade, that he was arrested at 2:30 in the afternoon in the presence of his mother, that he was given his *Miranda* rights and then questioned for approximately 40 minutes, that he was then placed in a cell for some six hours, that he was then interrogated for approximately 30 minutes after having been permitted to listen to a portion of a tape recording of his brother's confession, that the juvenile was served a meal and permitted to rest during that time, and that the juvenile had previous contact with law enforcement authorities sustained determination that the juvenile's confession was voluntary.

Ferdinand J. Kleppner, Grisbaum & Kleppner, Metairie, Wilson F. Walters, Wilson F. Walters & Associates, Inc., Denison, Tex., for defendant-Appellant.

William J. Guste, Jr., Atty. Gen., Barbara B. Rutledge, Asst. Gen., Francis F. Dugas, Dist. Atty., Walter K. Naquin, Jr., Asst. Dist. Atty., for plaintiff-appellee.

1274 La.

SUMMERS, Justice.

Jessie Collum, his wife Lenora, and their children, Jeffrey, age nine, and Anna, age six were killed on May 27, 1977 in their trailer home in the Four Point HEights Subdivision to the Town of Raceland, in Lafourche Parish, Louisiana. All had been shot several times; Jessie Collum had also been stabbed several times. Two days later Donnie Collum, who was then fifteen years old, having been born December 21, 1961, and his brother Scott Collum, age thirteen, were stopped by police officers in Benson, Arizona, driving a 1974 Cadillac automobile. The brothers admitted the Cadillac belonged to Jessie Collum, their father by his first marriage to Peggy Mendoza and that they had taken it without permission. The Arizona authorities retained custody of the automobile and the boys were turned over to their mother in Victoriaville, California.

On June 1, 1977 the bodies of the four Collums were discovered. Police authorities in Lafourche Parish ascertained that Donnie and Scott had been living with their father and that the Cadillac was missing. Accordingly, a nationwide bulletin was broadcast in an attempt to locate the Cadillac for investigation in connection with a homicide. As a result of an inquiry to that office on June 3, the San Bernardino County Sheriff's office notified the Lafourche authorities of the whereabouts of Donnie and Scott Collum in Victoriaville, California. Arrest warrants were then issued by the District Judge in Lafourche Parish to arrest them for theft. Donnie and Scott were apprehended on June 3, 1977 and taken to Sheriff's Office Sub-Station in Victoriaville.

They were questioned about the car theft and the killings and gave a statement to the California authorities admitting their guilt of the killings. Later, on the evening of June 3, two Lafourche Parish deputies arrived and Donnie and Scott were again questioned and confessed for a second time.

Upon their return to Louisiana Donnie was indicted by the grand jury for four counts of first degree murder as a juvenile fifteen years of age charged with a capital offense. La.Const.

art. V, § 19; La.Rev. Stat. 14:30; La.Rev.Stat. 13:1570(A)(5). A motion to suppress his confessions was filed, heard and denied on December 5, 1977. The charges were then reduced to four separate counts of second degree murder, to which Donnie pled guilty on February 24, 1978, reserving his right to appeal the ruling on the motion to suppress. On each of the four counts he received a sentence of life imprisonment without the benefit of probation or parole for forty years, such sentences to be served consecutively. La. Rev.Stat. 14:30.1.

On this appeal three assignments of error are urged.

1.

At the outset it must be determined whether this Court's decision in ***State in the Interest of Dino***, 359 So2d 586 (La. 1978), is applicable to this prosecution. By that decision this Court decided that a confession of a person under seventeen years of age is not admissible unless the juvenile actually consulted with an attorney or an adult before waiving his right to silence; that the attorney or adult consulted was interested in the welfare of the juvenile; and if an adult other than an attorney is consulted, the adult also must be fully advised of the rights of the juvenile.

If the *Dino* holding applies to the case at bar, the State readily concedes the conviction must be reversed because the *Dino* decision was not complied with. No attorney, parent or adult friend actually consulted with the defendant at the interrogation. The State submits, however, that *Dino* should not be applied retroactively and the case should be governed by the "Totality of Circumstances Test", the rule of law in these cases for many years in this State and in the Federal courts.

Dino became effective June 15, 1978. The offenses in the case before us occurred on May 27, 1977, and the guilty pleas were entered on February 24, 1978. A motion to appeal was

filed on March 3, 1978 returnable on May 2, 1978, and filed in this Court on May 3, 1978. Thus the issue of the retroactivity of the *Dino* decision, or at least its applicability to cases on direct appeal at the time of the decision, is squarely presented.

The *Dino* case dealt in part with a confession obtained from a thirteen-year-old boy as the result of a custodial This Court concluded that the State had failed to show beyond a reasonable doubt under the totality of circumstances test that the juvenile had knowingly and intelligently waived his privilege against self-in-crimination and his right to counsel. This Court felt, however, that the "exclusive use of the totality of circumstances test in relation to waivers by juveniles tends to mire the courts in a morass of speculation." To end this speculation on the part of both the courts and the police, it was decided that to demonstrate a knowing and intelligent waiver on his part, the State "must affirmatively show that the juvenile engaged in a meaningful consultation with an attorney or an informed parent, guardian, or other adult interested in his welfare before he waived his right to counsel and privilege against self-incrimination." This Court recognized that though most minors are not mature enough to understand their rights nor competent to exercise them, some minors would be capable; nevertheless, it made the consultation an absolute prerequisite to waiver because such a requirement was a step toward guaranteeing knowing and intelligent waivers regardless of the minor's degree of sophistication. 359 So2d at 591-94.

In its impact on the law and police custodial interrogation, this decision may be likened to the United States Supreme Court decision in *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), in which the Court made the giving of certain warnings or rights an absolute prerequisite to the admissibility of an in-custody confession. As in this case, it was not long before the courts were called upon to determine

the retroactivity of what has become known as the *Miranda Rule*.

In *Johnson v. New Jersey*, 384 U.S. 719, 86 S.Ct. 1772, 16 L.Ed.2d 882 (1966), the United States Supreme Court decided that the *Miranda Rule* would apply only to cases in which the trials commenced after the decision was handed down. Three criteria were formulated for deciding the retroactivity issue: 1) the purpose of the new rule; 2) the reliance which may have been place upon prior decisions on the subject; and 3) the effect on the administration of justice of a retroactive application.

[1] This Court's decision in *State v. king*, 347 So.2d 1108 (La. 1977), took the position that the balancing process of the criteria applied in *Johnson v. New Jersey* would be explored only where a newly announced rule does not go to the very integrity of the fact-finding process. Where the integrity of the fact-finding process is impaired, retroactivity would be imposed.

While the integrity of the fact-finding process is inextricably entwined with the three criteria applied in *Johnson v. New Jersey*, a separate and threshold consideration of that factor is articulated in keeping with the mandate of *State v. King*.

Under the law as it existed when Connie Collum gave the confessions, it was not sacramental to the validity of a juvenile's confession that the State "must affirmatively show that the juvenile engaged in a meaningful consulation with an attorney or informed parent, guardian or other adult interested in his welfare before he waived his right to counsel and privilege against self-incrimination" as mandated by this Court's decision in *Dino*. Aside from his claim that the *Dino* decision should be applied retroactively to his case to invalidate his confession, defendant makes insubstantial claims that his confession was involuntary. As this opinion points out hereafter no procedures were employed in taking the statements which were not permissible under the then prevalent jurisprudence approving the

totality of circumstances test.

[2] The major design of the new rule announced in *Dino*, even if it were to overcome an aspect of the criminal trial that substantially impairs its truth-finding function, is not violated in this case where there was no trial and the accused has pled guilty. In such a situation, this Court's jurisprudence and the jurisprudence of the Federal [1276 La.] courts have consistently held that only the jurisdiction of the court which recieved the plea is reviewable on appeal. *Lefkowitz v. Newsome*, 420 U.S. 283, 95S.Ct. 886, 43 L.Ed.2d 196 (1975); *Brady v. United States*, 397 U.S. 742, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970); *State v. Torres*, 281 So.2d 451 (La. 1973); *State v. Foster*, 263 La. 956, 269 So.2d 827 (1972). The rule is, however, subject to an exception applicable to this case. With the court's approval defendant reserved the right to appellate review of the non-jurisdictional ruling on the motion to suppress. Review of that ruling is therefore permissible under this exception. *State v. Crosby*, 338 So.2d 584 (La.1976).

But the *Dino* rule does not go to the very integrity of the fact-finding process. The decision purports to assure that a juvenile answering questions at a custodial interrogation does so with an intelligent inderstanding of his right to remain silent and of the consequences which may flow from relinquishing that right. This is the same purpose that the older voluntariness standard and the prophylactic *Miranda* rule served. Consequently, although an additional safeguard was announced in *Dino*, an accused whose case was being tried or on appeal on the effective date of *Dino* was nevertheless not deprived of asserting the same claim of involuntariness under the totality of circumstances test.

In the case at bar no evidence has been excluded and no question of the voluntariness or accuracy of the guilty plea is urged. *Williams v. United States*, 401 U.S. 646, 91 S.Ct. 1148, 28 L.Ed.2d 388 (1971). Only the validity of defendant's con-

fession is argued. The very integrity of the fact-finding process is unaffected.

Complete retroactive effect was not given to the exclusionary rule of *Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684, 6 L. Ed.2d 1081 (1961); in *Linkletter v. Walker*, 381 U.S. 618, 85 S.Ct. 1731, 14 L.Ed.2d 601 (1965). Likewise in *Tehan v. Shott*, 382 U.S. 406, 86 S.Ct. 459, 15 L.Ed.2d 453 (1966), the Court declined to give retroactive effect to *Griffin v. California*, 380 U.S. 609, 85 S.Ct. 1229, 14 L.Ed.2d 106 (1965); *England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411, 84 S.Ct. 461, 11 L.Ed.2d 440 (1964). See also, our opinion in *City of Baton Rouge v. Short*, 345 So.2d 37 (La. 1977).

Having decided that the *Dino* rule does not impair the integrity of the fact-finding process under the circumstances of this case, an analysis of the three criteria announced in *Johnson v. New Jersey*, supra, is appropriate.

[3] The purpose of the new rule enunciated in *Dino* is twofold: to protect the juvenile's right against self-incrimination and his right to counsel. It is not argued that the risks of convicting an innocent person are increased when the right against self-incrimination is unknowingly waived. An increased danger comes only when the incriminating statement given is likely to be false, a circumstance resulting not from a mere waiver of the right, but from additional outside pressures. The absence of counsel at this pretrial stage does not increase the risk of convicting an innocent either. The most counsel could do at this stage (for the person being questioned) is either bargain for a plea or advise his client not to answer any questions; both functions are undoubtedly of more use to a guilty person than to an innocent one. In sum, the *Dino* rules are not meant to avoid a risk of convicting an innocent person, and the assence of the *Dino* procedure does not affect the integrity of the fact-finding process.

Reliance which may have been placed upon prior decisions on the subject was the second criteria examined in Johnson. Prior to the *Dino* decision the "totality of circumstances" test was well accepted in Louisiana as a basis for deciding whether a juvenile had knowingly and intelligently waived his right. *State v. Hills*, 354 So.2d 186 (La. 1977); *State v. Hall*. 350 So.2d 141 La. 1977); *State v. Ross*, 343 So.2d 722 (La. 1977); *State v. Ghoram*, 328 So.2d 91 (La. 1926); *State v. Sylvester*, 298 So.2d 807 (La.1974); *State v. Melanson*, 259 So.2d 609 (La.App.1972).

The prevailing rule throughout the nation at the time was to the same effect. *West v. United States*, 399 F.2d 467 (5th Cir. 1968); *Mosley v. State*, 246 ARk. 358, 438 S.W.2d 311 (1969); *People v. Lara*, 67 Cal.2d 365, 62 [1277] Cal.Rptr. 586, 432 P.2d 202 (1967), *cert.denied*, 392 U.S. 945, 88 S.Ct. 2303, 20 L.Ed.2d 1407; *State v. Roberts*, 274 So.2d 262 (Fla. App. 1973); American Law Institute, Model Code of PReArraignment Procedure, pp. 361-62 (1975).

From these authorities it is abundantly clear that neither the courts nor law enforcement authorities in Louisiana were aware that a juvenile's custodial interrogation could not under any circumstance be conducted without consulation with attorney, parent or adult as set forth in *Dino*. Reliance on prior decisions on the subject was therefore explicit.

[4] Considering the purpose of the rule announced in *Dino* and the undoubted firm and justifiable reliance upon the "totality of circumstances test" repeatedly approved by the courts of Louisiana and elsewhere, an extremely detrimental effect upon the administration of justice would result from a retroactive application of the *Dino* rule requiring the release of all persons convicted on the basis of custodial interrogations under the totality of circumstances test.

For these reasons *Dino* will affect only those cases in which the trial began after June15, 1978.

II.

By this argument defendant urges that the trial court should have suppressed the confession because at the time of the confession defendant was being detained in a lock-up in California intended primarily for adult offenders, allegedly in violation of statutes proscribing such conduct in Louisiana and California.[1] When defendant was [1278] arrested in Victoria-

1. La. Rev. Stat. 13:1577:

"A. Whenever a child is taken into custody, unless it is impracticable or inadvisable or has been otherwise ordered by the court, he shall be released to the care of a parent, tutor or other custodian, upon the promise of such parent, tutor or custodian to bring the child to the court at the time fixed. The court may require a bond from such person for the appearance of the child and upon the failure of such person to produce the child when directed so to do, the court may, in addition to declaring the bond forfeited, punish that person as in case of contempt. If not so released such child shall be taken immediately to the court or to the place of detention designated by the court or probation officer. Any police officer, sheriff, probation officer, or other peace officer violating any of the terms of this section may be judged guilty of contributing to the act or condition which would bring a child within the provision of this chapter. Pending further disposition of the case, the child may be released to the care of a parent, tutor, agency or other person appointed by the court, or be detained in such place as shall be designated by the court or probation officer subject to further order.

"B. Nothing in this Chapter shall be construed as forbidding any peace officer from immediately taking into custody any child who is found violating any law or ordinance, or whose surroundings are such as to endanger his welfare. In every case the officer taking into custody any child for detention shall immediately and in any event within twenty-four hours, report the fact to the court or probation officer and the case shall then be proceeded with as provided by law. In addition, nothing in this Chapter shall be construed as forbidding any peace officer from taking into temporary custody during school hours any child who is required by law to attend school and is now exempted under the provisions of R.S. 17:226. where such child has absented himself or herself from school without proper authority, provided that the peace officer shall immediately place the child in a school facility or receiving center designated by the parish school board for acceptance of such child, or monentarily detaining any child from the age of seven through fifteen, both inclusive, who

ville, he was brought to a police substation and questioned. After the interview, he was placed in a cell and left there for about four hours until he had a second interview, at which he confessed. The cell in which he was placed was part of a separate-block with a locking door, built so that the police could segregate juveniles from adult prisoners. Other than a trusty who delivered his food and cleaned an adjoining cell, defendant did not say that he saw any prisoners.

1. Continued

appears to be absent from school during normal school hours, and inquiring of the circumstances relative to his or her being absent from school.

"CExcept as hereinafter provided, no child shall be confined in any police station, prison or jail, or be transported or detained in association with criminal, vicious or dissolute persons. A child fifteen years of age or older may be placed in a jail or other place of detention for adults, but in a room or ward entirely separate from adults.

"D Whenever a child under the age of seventeen years is taken into custody by a peace officer or probation officer, except when the child willfully misrepresents himself as seventeen or more years of age, such child shall be released within seventy-two hours after having been taken into custody, excluding non-judicial days, unless within said period of time a petition to declare him a delinquent or a child in need of supervision has been filed pursuant to the provisions of this chapter.

"E Whenever a child who has been held in custody for more than twelve hours by a probation officer, or law enforcement official of the state, city, parish or municipality and subsequently released and no petition is filed, the said official shall prepare a written explanation of the reasons why the child was held in custody for more than twelve hours. The written explanation shall be prepared within seventy-two hours after the child is released from custody and filed in the record of the case. A copy of the written explanation shall be sent to the parents, tutor, guardian, or other person having care or custody of the child."

Cal.Code Ann., Welfare & INstitutions §216(b);

"(b) To any person who violates any law of another state defining a crime, and is at the time of such violation under the age of 18 years, if such person thereafter flees from that state into this state. Any such person may be proceeded against as an adult in the manner provided in Chapter 4 (Commencing with Section 1547) of Title 12 of Part 2 of the Penal Code. The magistrate shall, for purposes of detention, detain such person in juvenile hall if space is available. If no space is available in juvenile hall, the magistrate may detain such person in the county jail."

[5] Although Louisiana's statute stipulates that minors shall not be confined in either a police station or jail, it allows children fifteen years of age or older to be detained in a place of detention for adults, as long as they are in a room or ward separate from the adults. This was the situation in this case and the brief encounter with the trusty can hardly be considered a confinement "in association with criminal, vivious or dissolute persons" which the statute condemns. In any event the statute does not purport to invalidate a confession when its proscriptions are not observed, only to punish the peace officer who placed the juvenile there. Improper confinement is only one factor in the totality of circumstances test. ***State in the interest of Wesley***, 285 S.2d 308 (La.App. 1973).

Minors who commit a crime in another state and flee to California are given less protection. They, other than for housing purposes, may be proceeded against as adults but must be detained in a juvenile hall if space is available, otherwise they may be confined in the county jail. Standard prodedure in that state is to complete the initial investigation before transferring a minor to a juvenile hall.

III.

[6,7] Proper application of the totality of circumstances test requires that the State sustain the burden of affirmatively proving that the waiver of rights was made freely and voluntarily, with understanding of the consequences which might flow from such a waiver. La.Rev.Stat. 15:451; ***State v. Hills***, 354 So.2d 186 (La.1977). Age of the defendant is a factor which requires this Court to give closer scrutiny to the confession of a juvenile than would ordinarily be required of an adult confession. ***State v. Sylvester***, 298 So.2d 807 LLa.1974).

There is no claim here that the defendant was beaten or coerced, promised anything as an incentive, or induced to confess on these grounds. His contention is simply that he did not

understand either his ***Miranda*** rights or the consequences of waiving them, so his attempted waiver is therefore invalid even under the pre-***Dino*** totality test.

[8] There is no litany of factors to be considered in applying the test. Each case is to be judged on all of the facts and circumstances in that particular situation. Obviously they will vary. At the suppression hearing these facts were adduced: Defendant is a fifteen-year-old minor, who completed 9th grade, and while average in math, was poor in reading. He and his brother were arrested at the residence of their sister where they were staying at 2:30 on the afternoon of Jun3. In their mother's presence they were informed that they were being arrested in connection with the theft of an automobile. Their mother was told that if she wanted further information, she would have to go to the police station. No mention was made at this time that the investigation involved murder. The boys were handcuffed and taken to the police station. In the way, they were read their ***Miranda*** rights from a standard police card. Both acknowledged that they understood their rights.

At the station defendant was "reninded" (but not read) of his rights, and asked if he understoof them. When he responded affirmatively, the officers began questioning him about the car theft. After about thirty minutes, they told him that his father had been shot, and asked if he could tell them anything about it. When defendant became nervous, the questioning was discontinued. At no time did he demand to see either an attorney or his mother, the officers testified. Defendant's testimony at the suppression hearing was to the contrary. He said that when the police began questioning him about the murder, he adked to see an attorney. When he did the policeman said "Okay, but let me ask you a couple more questions," according to defendant's testimony, and they asked him about his name, age other purely informational questions. It is uncontroverted that at no time thereafter did defendant ask to see his mother or an attorney. He said he did not because

he understood the policeman's response, "Okay," meant they would obtain counsel for him. No further explanation of the Miranda rights was given or requested. The police were convinced that defendant thououghly understood his rights.

Following this interview defendant was removed for booking and placed in a cell. While there the police interrogated his brother, who confessed and implicated defendant. Defendant testified that while he was in a cell, he talked to a man whom he supposed was a jailer (but was actually a trusty). The man told him that if he confessed, he would get three years at most. This testimony was not corroborated.

Defendant then sent for one of the detectives and asked if he could find out what his brother had said. He was told something to the effect that his brother had told everything, and about thirty seconds of the taped interview with his brother was played. He was again reminded of his rights and indicated that he understood them. Then, some six hours after being taken into custody, but after only forty minutes of interrogation, defendant made an inculpatory statement which was tape recorded. A short while later about 10 p.m., his mother was allowed to see him. Some ten hours after his arrest, Louisiana officers arrived in California. Basing their questions on defendant's prior statements, these officers questioned defendant after advising him of his rights. This confession was also recorded on tape.

These tape recordings were heard by the trial judge and in this Court. They show a careful, slow and deliberate interview, free of any hint of impropriety by the officers and expressing an unrestricted willingness on the part of defendant to disclose even the most minute details of the offenses. The recordings are the essence of voluntariness.

All of the circumstances support a finding of a free and voluntary confession. Defendant was no stranger to police pro-

cedure or contact with law enforcement authorities. having had several encounters with the law relating to juvenile delinquency. Within six weeks of these murders he had been in police custody on at least two occasions. He was arrested in his mother's presence and given the ***Miranda*** warnings immediately thereafter Four times thereafter he was reminded of these rights and acknowledged that he understood them.

The first interrogation lasted approximately 30 minutes, the second about 40 minutes. After his incarceration and prior to the first confession defendant was detained in a cell alone and was served a meal and permitted to rest.

In a ruling on the voluntariness of a confession the decision of the trial judge is assigned great weight. ***State v. Ross, 343 2d 722 (La.1977); State v. Payne,*** 338 So.2d 682(1976). In a careful and thorough per curiam the trial judge who presided at the suppression hearing reviewed the evidence and the law pertaining to the evidence he heard. Many of the crucial questiosn involved credibility determinations which he resolved in favor of a finding that [1280 La.] the confessions were free and voluntary. Our review of the evidence resolves the matter in favor of affirming that ruling.

For the reasons assigned, the convictions and sentences are affirmed.

TATE, J., dissents and assigns reasons.
DIXON, J., dissents.
DENNIS,J., dissents and assigns reasons.
TATE' Justice, dissenting.

I dissent for substantially the reasons that will be assigned by my brother DENNIS.

The rule announced in ***State in the Interest of Dino,*** 359 So.2d 386(La.1978) was designed to insure integrity of the fact-finding process.

The decision recognized the questionable voluntariness and

truthfulness of the confession of a juvenile, who responds to interrogation under police custody without consultation with an attorney or adult member of his family. The rule recognized the general unreliability of confessions of young persons (here, a 15-year-old boy), responding to interrogation while surrounded by adult police officers and secluded in police custody from the advice and counsel of adults who care.

Even adults, with more mature judgment and experience of the world, have been known to respond falsely in order to please their captors or to avoid the unknown but imagined terrors of a refusal to do so - witness *Miranda* and its prophylactic rule, designed to end the substantial danger in the administration of criminal justice of the use of false or coerced confessions in lieu of objective investigation in order to assure convictions.

In the present instance, the interrogation tactics appear to have been gentle and professional. There may be good reason to believe that, in this case, the confession of the defendant boy is not untruthful.

Yet *Dino* recognizes that children should not be sent to adult prisons for the rest of their lives on the basis of uncounselled confessions, inherently unreliable.

The reasons behind *Dino* demand, whether the confessions have been obtained before or after that decision, that it be applied to all confessions obtained from juveniles where they have not been permitted first to confer with adults of their family or a lawyer. That decision merely enunciated a protection for the integrity of the truth-finding process in prosecutions of juveniles of such obvious necessity that, even before *Dine*, many if not most enlightened law-enforcement agencies had already adopted the practice formally mandated by that opinion.

I therefore respectfully dissent.

DENNIS, Justice, dissenting.

State in the Interest of Dino, 359 So.2d 586 (La.1978) set forth this Court's view of what the prosecution must prove in order to show that a juvenile knowingly and intelligently waived his constitutional right to counsel and his privilege against self-incrimination before giving a confession. The prosecution bears a heavy burden of proving, not only that the waiver was made knowingly, intelligently and voluntarily, but also that the juvenile engaged in a meaningful consulation with an attorney or an informed parent, guardian or other adult interested in his welfare before waiving his rights. The majority opinion acknowledges this much of the *Dino* holding.

However, the majority opinion concludes that *Dino's* standards of official conduct in the interrogation of juveniles have nothing to do with the integrity of the fact-finding process. In my opinion the majority has overlooked some of the important underlying reasons for the *Dino* decision and the realities from which they are derived.

In *Dino* we plainly stated three reasons why juveniles should not be allowed to waive their constitutional rights on their own. In addition to the main reason-to assure that the waiver itself is knowing, intelligent and voluntary-we set forth two other reasons which relate to the voluntariness of the juvenile's confession, as well as to his waiver of rights. We said that "[1]f the juvenile decides to talk to his interrogators, the assistance of an adult can mitigate [1281] the dangers of untrustworthiness" and "the likelihood that the police will practice coercion;" and that "[t]he presence of such an adult can also help to guarantee that the accused gives a fully accurate statement and that the statement is rightly reported by the prosecution at trial." 359 So.2d at 592.

It is evident, therefore, that the *Dino* rule does go to the integrity of the fact-finding process. When a confession is ad-

mitted into evidence it has such a persuasive effect upon the trier of fact as to substantially determine the outcome of the fact-finding process. Consewuently, the determination of guilt or innocence is usually predetermined at the time the confession is obtained. ***See, State v. Glover,*** 343 So.2d 118, 129 (La.1977); Comment, ***The Coerced Confession Cases in Search of a Rationale,*** 31 U.Chi.L.Rev. 313, 325 (1964). Obviously then, the *Dino* rule, which seeks to insure trustworthiness, voluntariness and accurate reporting of juvenile confessions, is vitally concerned with the ultimate fact of guilt or innocence and the process by which it is determined.

Under our established principles of interpretation a new constitutional doctrine must be given complete retroactive effect when its major purpose is to overcome an aspect of the judicial proceeding which impairs its truth finding function and so raises serious questions about the accuracy of determinations of guilt in past trials. ***State v. Swift,*** 363 So2d 499 (La. 1978); ***State v. King,*** 347 So.2d 1108 (La.1977); ***City of Baton Rouge v. Short,*** 345 So.2d 37 (La. 1977); ***cf. Ivan v. City of New York,*** 407 U.S. 203, 92 S.Ct. 1951, 32 L.Ed.2d 659 (1972); ***Williams v. United States,*** 401 U.S. 646, 91 S.Ct. 1148, 28 L.Ed.2d 388 (1971); ***Linkletter v. Walker,*** 381 U.S. 618, 85 S.Ct. 1731, 14 L.Ed.2d 601 (1965).

Since the major function to be served by *Dino* is the major function to be served by *Dino* is the prevention of unfair determinations of guilt based on improvident or untrustworthy juvenile confessions, it is clear that *Dino* should be given complete retroactive effect.

Moreover, other factors which wiegh against retroactive effect of a new constitutional doctrine do not apply to *Dino*. The extent of reliance on the old rule by Louisiana law enforcement officials was not significant and *Dino's* impact on the administration of justice will not be severe. ***See, Williams v. United States, supra.*** The decision in *Dino* merely required by law a procedure already followed in practice by many Louisiana

police officers. ***See, State in the Interest of Dino,*** 359 So.2d 586, 592-93 (La. 1978); Comment, ***Louisiana's Youth Law: Rules and Practice,*** 35 La.L.REv. 851, 856 (1975). The practice now required by *Dino* was foreshadowed in numerous state and federal decisions. In ***State v. Ross,*** 343 So.2d 722, 729 (La.1977), members of this Court noted that, in proceedings against juveniles, most investigating offers took the precaution of allowing a juvenile to confer with a family member before a waiver of his rights, and commended the procedure. As early as 1948, the United States Supreme Court recognized that a juvenile's isolation from any friendly adult prior to police interrogation raised serious questions concerning voluntariness. ***See, Haley v. Ohio,*** 322 U.S. 596, 68 S.Ct. 302, 92 L.Ed.224 (1948). ***See Also, Gallegos v. Colorado,*** 370 U.S. 49, 82 S.Ct. 1209, 8 L.Ed.2d 325 (1962).

For all of these reasons, but primarily because uncounselled guilty pleas by children substantially impair the truth finding functions of juvenile and adult courts, I respectfully dissent from the majority's refusal to give complete retroactive effect to the constitutional rule announced in *Dino*.

STATE V. COLLUM
Cite as, La. 365 So.2d 1272
365 SOUTHERN REPORTER, 2d SERIES
WEST KEY NUMBER SYSTEM

APPENDIX B

STATE IN THE INTEREST OF COLLUM

364 So.2d 166, (La. App. 1st Cir. 1978)

STATE OF LOUISIANA
In the INTEREST OF Scotty Lynn COLLUM
No. 12163
Court of Appeal of Louisiana,
First Circuit.
Oct.9, 1978.

Juvenile moved to suppress a confession. The 17th Judicial District Court, Parish of LaFourche, Walter I. Lanier. Jr.. J., denied motion to suppress, and defendant appealed. The Court of Appeal, Ponder, J., held that purported waiver of rights by juvenile was ineffective and confession and inculpatory statement should have been suppressed.

Reversed and remanded.

1. Criminal Law key 527

Although 13-year-old was given *Miranda* warnings several times by California law enforcement officials who questioned him, where juvenile was questioned without being allowed to consult with an attorney interested in juvenile's welfare or an adult interested in juvenile's welfare and fully advised as to juvenile's rights before giveing the confession, purported waiver of rights to counsel and against self-incrimination were ineffective and confession and inculpatory statements should have been suppressed. LSA-R.S. 13:1577, subd. C;U.S. C.A. Const. Amend. 5; LSA-Const. art. §13.

2. Courts Key 100(1)

Holding that purported waiver by juvenile of his rights must be adjedged ineffedtive upon failure by State to establish any of three prerequisites to waiver would be given retroactive effect.

Infants Key 16.4

Minors: Acceptance of guilty plea with reservation of right to appeal the denial of the motion to suppress is a procedure which may be used in juvenile cases.

Walter K. Naquin, Jr., and Jerome J. Barbera, III, Asst. Dist. Attys., Thibodaux, for plaintiff and appellee.

R. Dwain Blakley and Wilson F. Walters, Denison, Tex., and Fred J. Kleppner, Metairie, for defendant and appellant.

Before LANDRY, COVINGTON and PONDER, JJ.

PONDER, Judge.

Defendant, a juvenile, appealed from the judgment denying his motion to suppress a confession.

The issue is the admissibility of taped confessions and statements taken purportedly in violation of the United States Constitution [1] and the Louisiana Constitution[2] and of LSA-RS. 13:

1. U.S. Const., 5th Amendment:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

2. La.Const. of 1974, Art. 1 § 13.

"When any person has been arrested or detained in connection with the investigation or commission of any offense, he shall be advised fully of the reason for his arrest or detention, his right to remain silent, his

1577(C)[3].

[167] We reverse and remand.

Admittedly, Scotty Lynn Collum, a thirteen year old, was given the *Miranda* warnings several times by the California law enforcement officials who questioned him. Admittedly, also the juvenile was questioned without being allowed to consult with an attorney interested in the juvenile's welfare or an adult interested in the juvenile's welfare and fully advised as to the juvenile's rights before giving the confession. The State, however, contends that the juvenile waived his rights to counsel and against self-incrimination.

In the case of *State, In the Interest of Dino,* 359 So.2d 586 (La. 1978) the court said:

". . . the purported waiver by a juvenile must be adjudged ineffective upon the failure by the State to establish any of three prerequisites to waiver, viz., that the juvenile actually consulted with an attorney or an adult before waiver, that the attorney or adult consulted was interested in the welfare of the juvenile, or that, if an adult other than an attorney was consulted, the adult was fully advised of the rights of the juvenile."

2. Continued

right against self incrimination, his right to the assistance of counsel and, if indigent, his right to court appointed counsel. In a criminal prosecution, an accused shall be informed of the nature and cause of the accusation against him. At each stage of the proceedings, every person is entitled to assistance of counsel of his choice, or appointed by the court if he is indigent and charged with an offense punishable by imprisonment. The legislature shall provide for a uniform system for securing and compensatting qualified counsel for indigents."

3. LSA-R.S. 13:1577(C):

"Except as hereinafter provided, no child shall be confined in any police station, prison or jail, or be transported or detained in association with criminal, vicious or dissolute persons. A child fifteen years of age or

[1] We hold, therefore, that the purported waiver was ineffective and the confession and inculpatory statements should have been suppressed.

[2] The State contends that the *Dino* holding should not be given a retroactive effect. The Supreme Court, in granting a writ and reversing in *State of Louisiana, In the Interest of Leander Jones*, 360 So.2d 1181 (La. 1978). gave instructions to reconsider in light of the *Dino* case. The relevant facts in the *Jones* case are indistinguishable form those in the present case.

[3] While the procedure employed, that is of acceptance of a guilty plea with reservation of right to appeal the denial of the motion to suppress, is unusual, it has been approved in criminal cases. See *State v. Crosby*, 338 So.2d 584 (La. 1976). We approve the use in juvenile cases.

We do not reach the wuestion of the purported violation of LSA-R.S. 13:1577(C), in view of the above conclusions.

The judgment overruling the motion to suppress is reversed. The case is remanded to the juvenile court for futher proceedings not inconsistent with this opinion.

REVERSED AND REMANDED.
WEST KEY NUMBER SYSTEM

3 Continued
older may be placed in a jail or other place of detention for adults, but in a room or ward entirely separate from adults."

APPENDIX C

STATE IN THE INTEREST OF COLLUM
(On rehearing)
368 So.2d 460, (La. App. 1st Cir. 1979)

STATE of Louisiana In the INTEREST of Scotty Lynn COLLUM

No. 12163

Court of Appeal of Louisiana, First Circuit

On Rehearing Jan. 16, 1979

Juvenile moved to suppress a confession. The Seventeenth judicial District Court, Parish of LaFourche, Walter I. Lanier, Jr., J., denied the motion to suppress, and the juvenile appealed. The Court of Appeal, 364 So.2d 166, held that the confession should have been suppressed. There after, a rehearing was granted to reconsider the decision in view of an intervening ruling of the Louisiana Supreme Court. The Court of Appeal, Ponder, J., held that: (1) the rule that a juvenile cannot waive his constitutional right against self-incrimination without consulting an attorney or an adult both interested in the juvenile's welfare and fully advised of the juvenile's rights had only prospective application, and (2) the juvenile was not entitled to suppression of the confession.

Prior decision recalled and judgment of trial court affirmed.

1. Courts Key 100(1)

Rule that a juvenile could not waive his constitutional right against self-incrimination without consulting an attorney or an adult both interested in the juvenile's welfare and fully advised of the juvenile's rights would be given only prospective effect.

2. Criminal Law Key 519(8)

Although 13-year-old was being detained in lockup in California that was intended primarily for adult offenders when he was questioned by California law enforcement officials who ultimately obtained a confession after giving the juvenile his *Miranda* warings several times, circumstances established that the confession was voluntary and, therefore, juvenile was not entitled to suppression of the confession.

Walter K. Naquin, Jr., and Jerome J. Barbera, III, Asst. Dist. Attys., Thibodaux, for plaintiff and appellee.

R. Dwain Blakley and Wilson F. Walters, Denison, Tes., and Russell O. Ayo, Jr., Thibodaux, for defendant and appellant.

Before LANDRY, COVINGTON and PONDER, JJ.

PONDER, Judge.

We granted a rehearing to reconsider our first opinion in view of the Supreme Court's decision in *State of Louisiana v. Collum*, La. 365 So.2d 1272, 1978.

In our first opinion we applied the holding of *State, In the Interest of Dino*, 359 So.2d 586 (La.1978) that a juvenile could not waive his constitutional right against selfincrimination without consulting an attorney or an adult both interested in the juvenile's welfare and fully advised of the juvenile's rights. For retroactive application of *Dino*, we relied on *State of Louisiana, In the Interest of Leander Jones*, 360 So.2d 1181 (La.1978) in which the Supreme Court reversed our decision, reported at 357 So.2d 636, and remanded for reconsideration in light of the *Dino* case.

[1] We were in error. *In state v. Collum, supra*, concerned with the confession of Donnie Collum, the 15 year old brother of Scotty Collum, the Supreme Court held that the *Dino* decision will affect only those cases in which the trial began after June 15, 1978.

[2] The appellant contends that the confession should have been suppressed because defendant was being detained in a

lock-up in California intended primarily for adult offenders, allegedly a violation of Louisiana [1] and California[2] statutes.

[461] The same contention was made in ***State v. Collum, supra,*** and was rejected on two grounds: (1) our statute allows those 15 year old or older to be detained in an adult detention place if in a separate room or ward; (2) improper detention is only a factor in the totality of circumstances test for free and voluntary nature of a confession and does not invalidate per se a confession obtained during the statute's violation. The first reason does not apply to Scotty Collum since he was thirteen years old at the time.The second reason applies, however, and we reject appellant's contention that the confession should be suppressed because of that violation. We do consider it as one of the factors in the totality of circumstances test.

In detailed, meticulous written reasons for judgment, the trial court considered all the relevant factors to be considered in determining the free and voluntary nature of the confessions and inculpatory statements, We find no error.

Furthermore, the Supreme Court in***State v. Collum, supra,*** considered the facts surrounding Donnie Collum's confession and found it to be free, voluntary and admissible. Except for the age of the defendants and minor differences of time and circumstances that we find to be immaterial, Donnie's and Scott's confessions were obtained under circumstances so nearly identical as to dictate a like result.

For these reasons, our prior decision is now recalled and there is now judgment affirming the trial court's denial of the motion to suppress.

AFFIRMED.

1. LSA-R.S. 13:1577
2. Calif. Code Ann. Welfare & Institutions, § 216(b).

WEST KEY NUMBER SYSTEM

APPENDIX D

STATE IN THE INTEREST OF COLLUM

(Denial of Certiorari)

No. 64,336, Louisiana Supreme Court (1979)

SUPREME COURT OF LOUISIANA
NEW ORLEANS, 70112

STATE OF LOUISIANA — April 27, 1979
IN THE INTEREST OF:
SCOTTY LYNN COLLUM — NO. 64,336

IN RE: Scotty Lynn Collum, applying for Certiorari, or writ of Review to the Court of Appeal, First Circuit, Parish of Lafourche No. 12,163.

Writ denied.

FWS
PFC
WFM
FAB
TATE, DIXON & DENNIS, J.J., Would grant the writ.

A TRUE COPY
CLERK'S OFFICE
SUPREME COURT OF LOUISIANA
NEW ORLEAANS
April 27, 1979

/s/ ILLEGIBLE
Clerk of Court

APPENDIX E

DONNIE FRANKLIN COLLUM, Petitioner
VS. LOUISIANA

(Order Extending Time to File Petition for Writ of Certiorari)
UNITED STATES SUPREME COURT (1979)

SUPREME COURT OF THE UNITED STATES
No. A-777
DONNIE FRANKLIN COLLUM,

Petitioner,

V.
LOUISIANA

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner(x), IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including May 13, 1979.

/s/ Lewis F. Powell, Jr.
Associate Justice of the Supreme
Court of the United States
Dated this 6 day of March, 1979.

APPENDIX F

STATE OF LOUISIANA IN THE INTEREST OF LEANDER JONES

360 So.2d 1181 (La. 1978)

STATE of Louisiana in the interest of Leander JONES.
No. 62048
SUPREME COURT OF LOUISIANA
July 3, 1978

In re: Leander Jones applying for certiorari, or writ of review, to the Court of Appeal, First Circuit. Parish of Ascension. 357 So.2d 636.

Writ granted. Judgment of Court of Appeal is reversed and case is remanded to Court of Appeal for reconsideration in light of *State v. Dino*, La., 359 So.2d 586.

SANDERS, C. J., and SUMMERS and MARCUS, JJ., dissent.

APPENDIX G

STATE VS. COLLUM, MEMORANDUM OF TRIAL COUNSEL

STATE OF LOUISIANA
VS. NO.
DONNIE FRANKLIN COLLUM

STATE OF LOUISIANA
PARISH OF LAFOURCHE
17th JUDICIAL DISTRICT
COURT

MEMORANDUM AND SUPPORT OF MOTION TO SUPPRESS CONFESSION

FACTS

On May 27, 1977, Jessie Collum, his wife and 2 children were killed in Lafourche Parish. His automobile and two sons by a previous marriage, Donnie and Scott Collum, were missing. Later, Lafourche Parish deputies learned that Scott and Donnie Collum had been stopped by police in Benson, Arizona in an automobile which they identified as belonging to their father and admitted taking without his consent. The vehicle was left in Arizona and the boys were turned over to their mother in Victorville, County of San Bernadino, California who returned the boys to her home there. On June 3, 1977, Lafourche Parish deputies secured arrest warrants for Scott and Donnie Collum on a charge of auto theft. They then phoned to Victorville, California and requested the arrest and detention of Donnie and Scott Collum by San Baenadino Sheriff's deputies with whom they had been cooperating for several days.

At about 2:30 p.m., Pacific time, on June 3, 1977, Scott and Donnie Collum were arrested for auto theft, handcuffed, placed into a police unit; and, while the unit was turning around and driving off, were read the Miranda rights from a card by the driver of the unit, Deputy Robert Woodrum. Thereafter they were never again were read or told their Miranda rights by California police, but were reminded that they had been read. They were transferred to the Sheriff's office substation which is a police facility occupied by uniformed policeman and containing cells for incarceration of prisoners. At the police station, handcuffs were removed from one hand and they were handcuffed to chairs in separate interrogation rooms.

Two facts should here be noted:

(1) The law of California prohibits the detention of a juvenile in any police station or similar facility unless a Judge of the juvenile court has authorized detention in such a place.

(2) At the time of this arrest, Donnie Collum was 15 years of age, Scott Collum was 14.

Deputy Woodrum and his superior Sergeant Charles Sodaro commenced the interrogation of Donnie Collum in the police station while he was handcuffed to a chair. They began the interrogation relative to theft of the automobile and then moved to the subject of the killing of Jessie Collum and his family. At that time Donnie Collum asked for a lawyer. Although Sodaro and Woodrum deny that Donnie made this request for an attorney, they only asked a few more unimportant questions and stopped the interrogation. Sodaro and Woodrum contend that they stopped the interrogation at this point only out of compassion for Donnie Collum because he became nervous and emotionally upset at the mention of his father's death. Donnie Collum was then moved to a cell where he was in contact with other prisoners, specifically trustees whom he believe to be "jailers." One of those prisoners discussing his case, lead Donnie to believe that he could probably get probation or "3 years at the most." All of Donnie's actions thereafter were effected and influenced by the advice of this prisoner whom he mistook for a jailer.

While Sodaro and Woodrum were interrogating Donnie, Mrs. Peggy Mendoza, their mother, arrived at the police station. She and her sons had been told at this time of the arrest that they were being taken in for auto theft. She immediately, called Lafourche Parish to determine whether Jessie Collum or his wife had "pressed charges" against the boys for taking their father's car. She was told that neither Jessie or his wife

had signed any charges. She was also told that Jessie had been shot, however, she was not told when he had been shot, and assumed only that he had been wounded subsequent to the boys leaving Louisiana. Mrs. Mendoza felt thoroughly competent to handle any charges relative to theft of the automobile. She intended to confront her ex-husband with a choice of paying child support, which he had never done, or getting the auto theft charges dropped. She was at no time told that they were going to be interrogated relative to murder. When she arrived at the Victorville Station she wanted to see her boys and take them home because "no charges had been filed." Although Sergeant Sodaro denies it, he or someother officer came out of the interrogation room and told her to go home and wait until she was called. She did go home as she was told, and did wait until she was called. Sodaro and Woodrum, after terminating Donnie's interrogation when he requested counsel, went after Scott Collum in the adjoining room under the same conditions. Sodaro and Woodrum secured a confession from Scott Collum. During the interrogation of Scott, Donnie sent word to Sodaro that he wished to see him. Upon completing Scottie's interrogation, Sodaro sent for Donnie, whose only purpose for wanting to see Sodaro was to ask him if he could see Scott and inquire as to what Scott had said. It is not even suggested by Sodaro and Woodrum that Donnie wanted to talk to them about the crimes. However, when Donnie asked what Scott had said they told him that Scott had confessed and played a part of a tape of Scott's statement to him and then began to interrogate him again, which interrogation produced an alleged confession.

After Sodaro and Woodrum had secured a taped statement, a call was made to Mrs. Mendoza informing her that she could now come down the station. Upon her arrival of the station she was told that her sons had confessed to four murders, and understandably, she went into shock and emotional upset. When Mrs. Mendoza arrived at the police station, Sodaro and Woodrum were leaving to go to the airport to pick up La-

fourche deputies, Norman Diaz and Dennis Rodrigue. It should here be noted that Sodaro and Woodrum knew before they arrested Donnie and Scott Collum that the Louisiana officers were on their way to California and were due to arrive in 6 to 8 hours. It should also be noted that these officers knew that Donnie and Scott Collum had committed no crime in the state of California. They had been working cooperatively with the Lafourche deputies for several days and cooperated with them by interrogating the boys while the case was hot, so to speak. At sometime near midnight, Deputies Diaz and Rodrigue arrived at the Victorville police station and spoke with Mrs. Mendoza. They state that they told her that they were going to interrogate the boys and that she had a right to be present. There is no reason to doubt them. Mr. Mendoza does not recall this, however, her mental and emotional state at the time was such that it is obvious that she was too distraught and preoccupied to comprehend what the officers were talking about, and understood only that the officers were going to talk about the murders. Deputies Diaz and Rodrigue state that she asid she had "already heard that." Mrs. Mendoza has no recollection of that statement but, as stated before, it is not surprising that she should have failure of memory of those events. Although she claims to have found strength in prayer, she would certainly have been shocked and emotionally upset.

Deputies Diaz and Rodrigue read the Miranda rights to Donnie and Scott Collum and took taped statements from them. It should be noted that in the Sodaro and Woodrum interrogations the Miranda rights were read only once, while the police unit was being backed out and turned around from the Collum residence at the time of the arrest, and thereafter the boys were only reminded of the rights which has been read to them. While Donnie stated that he understood the Miranda rights before and during the interrogation, at the time of this hearing he still did not have a complete, intelligent comprehension of all the facets of the Miranda warning.

VOL. II

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 78-1715

DONNIE FRANKLIN COLLUM
AND
SCOTTY LYNN COLLUM

Petitioners

VERSUS

STATE OF LOUISIANA

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

GRISBAUM & KLEPPNER
FERDINAND J. KLEPPNER
Professional Building
3224 N. Turnbull Drive
Metairie, Louisiana 70002
ATTORNEY FOR PETITIONERS

APPLICABLE LEGAL PRINCIPLES

There is a question of conflict of laws involved herein, however the statutory law of California and the law of Louisiana are substantially alike with regard to the arrest and detention of the juveniles. Both states prohibit detention of juveniles at the police station, Louisiana at LSA-Rs 13:1577, and California at W and I Code Section 507: "No court, judge, referee or peace officer shall knowingly jail or lock up in detention any person under the age of 18 years, unless a judge of the juvenile court shall determine that there are no other proper and adequate facilities for the care and detention of such a person . . . "California has not as yet decided the question of the validity of a confession secured during an unlawful detention, as has Louisiana. Sodaro and Woodrum were acting in concert with and on behalf of the Lafourche Sheriff's deputies, and their acts are the responsibility of the Louisiana officers, Anderson v. US 318 US 356, 63S Ct. 599. It is our contention that while the lex loci delecti is applicable. Donnie Collum was protected by the law of Louisiana and the law of California, and that he had the right to claim protection, where afforded, by the laws of both states. For example, Sodaro and Woodrum by their precipitous action as agents for the Lafourche deputies deprived defendant of the protection of having his mother present that he would have received from the Louisiana officers, who requested her presence when they had arrived. The boys were also entitled to protection under California from confinement in a jail, etc. The application of one set of protective statutes does not exclude the application of others. We are unable to find any cases directly on this; but we vigorously urge that the juvenile is entitled to protection of laws of both states, and in event of a conflict, the law of Louisiana prevails.

We anticipate that the state will assume the position that Donnie Collum falls outside of the constitutional provision for juvenile laws, La CONST. Section 19, because he was 15 years of age and is alleged to have committed a capitol offense;

however, we refer your Honor to the wording of that section of the constitution which states that except for a minor, 15 years or over, alleged to have committed a capitol offense, the determination of quilt or innocense "shall be exclusively pursuant to juvenile procedures which shall be provided by law" This refers solely to the procedures and does not remove the juvenile from the protection of all substantive juvenile laws enacted for this protection, such prohibition of detention in a police station during investigation of the case. Here again we have a res vova proposition. It would be begging the question to say that since an illegal detention and interrogation developed evidence to merit an accusation of a capitol offense then the child has no standing to question the legality of those acts which produced the accusation. Donnie Collum did not fall outside of Juvenile Laws at any time during the investigatory stages of this matter insofar as those statutes protect the very young.

A question never considered squarely and thoroughly by any Louisiana court, and never considered by the Louisiana Supreme Court at all, is that concerning the capacity vel non of a minor to waive his constitutional ritht against self incrimination, ot to counsel. The question was considered fully by the court of California in People vs. Lara, 62 Cal. Rep. 586, 432 p2d 202, and while the majority opinion is contrary to our position, the dissenting opinion more accurately reflects the attitude of Louisiana law and our courts.

In Louisiana a minor has an almost absolute disability from exercising any act of judgment from which legal consequences might flow. He is not relieved of responsibility for physical acts of a tortious or criminal nature, but is legally incapable of doing anything of a legally binding nature or of waiving any rights, no matter how advantageous it may be to him, without the consent or concurrence of his parent or tutor.

CC34 "Age forms a distinction between those who have, and

those who do not have sufficient reason and experience to govern themselves and to be masters of their own conduct. But as nature does not always impart the same maturity and strength of judgment at the same age, the law determines the period at which persons are sufficiently advanced in life to be capable of contracting marriage and forming other engagements".

The minor, under 18 years of age, cannot contract; Louisiana Civil Code 1785. He can not buy a bicycle even at a great bargin. And the person who contracts with him may set the contract aside, no matter how much the minor wants it, unless his parent consents or he reaches majority in time to ratify it: Louisiana CC 1791. He cannot marry without the consent of his parents: Louisiana CC 92. He cannot enlist in the military service: LSA, RS 29:29. Nor may he manage his own property. He can work and earn money but can't spend it or invest it without parental consent. Louisiana CC 221. Under 16 years of age, he cannot dispose of any of his property, even by will, except that he may will property to his wife, if he has one: Louisiana CC 1476.

What property can a minor have more valuable than his constitutional and legal rights? What more valuable right can a minor have than the protection of his parent's knowledgeable and mature judgment?

Can it be the law that a minor who can not waive his disability to contract without parental consent can waive his constitutional rights without parental consent or, as in this case, against the parents wishes? We say no.

Is it the law that a child who can not give away a worn out toy, can give up his right against self incrimination and thereby lose his freedom or even his life? We say, no.

The state may argue, as was said in People vs. Lara, Cali-

fornia that in order for the state to protect itself an exception to the law is justified. It may well be, but that is a legislative function not a judicial one; and, until the legislature creates an exception the legal disability against a minor giving away property, or constitutional rights, persists and is the law.

Donnie Collum did not have the right to give up his right to counsel, or his right against self incrimination without the consent of his mother.

We take no issue with the arrest in this matter. There was probable cause to arrest Donnie and Scott Collum on a charge of theft of Jessie Collum's automobile. Cal. W and I SEc. 625 .1(b).

Until they were questioned and confessed there was no probable cause, and none was asserted, to arrest these boys for murder. In fact, the state made no attempt to so charge them prior to the confessions. On June 4, 1977 armed with knowledge of the confessions the state secured warrants for their arrest on charges of murder. We contend that prior to that time, certainly no later than the time that Scott Collum confessed, the state and its agents, Sodaro and Woodrum, had neither the reason nor the legal capacity to treat Donnie Collum as anything but a juvenile. He was under arrest by and for the State of Louisiana, California officers has been asked by Louisiana officers to interrogate the boys, T35L13-22, subject to all applicable laws of this state, those that might protect him as well as those that might punish him. He was under arrest in the State of California and was entitled to the protection of any laws of that state which might protect him. He had committed no crime in that state. Under the law of California he was illegally detained in a police station in contact with criminals (One of whom influenced him to believe that he would get probation or confinement for "three years at the most.")

We do not find that the California court has ever ruled on the question whether a confession taken during illegal confinement is inadmissable for that reason. The Louisiana Supreme Court has never done so but the 4th Circuit Court has in three cases held affirmatively that illegal detention invalidates a confession. In re Garland, 160 So.2d 340. In re White 160 So. 2d 344, and In re Wesley 285 So.2d 308.

Even applying the rule of "totality of circumstances" in People vs. Lara, infra, the confession herein must be found inadmissable.

(1) Donnie Collum, known to be aged 15. T34L28-29, was arrested on June3, 1977, about 2:45 p.m. for "auto theft."

(2) The real purpose of arresting and detaining him was kept from him and from Mrs. Mendoza. his mother. who could have requested counsel before the boys were interrogated or could have warned them not to talk with the police.

(3) She was mislead about the purpose of the arrest and interrogation.

(4) Mrs. Mendoza was excluded from the interrogation. The California officers made it clear in their testimony that they did not want her present, T62L7-9, and that if she had asked to see them (he did not recall whether she did) he would make her wait until he completed the interrogation. T8iL6-14, Also T62L2-9.

(5) Donnie was handcuffed to a chair during interrogation, T4iL26-29.

(6) In a Police Station, T36L11-15.

(7) In contact with criminals whom he mistook for jailers, T315L4-23.

(8) Was misled by a criminal to believe that he would get probation or at most three years, T318L31-T319-L8.

(9) No attempt was made to turn Donnie over to Juvenile Hall for handing and no report was made to the Hall until "close to midnight", T43L18-20.

(10) The police did not, as required by law, take the boys to Juvenile Hall "Because we wanted to interview them before they went to Juvenile Hall", T43L26,27.

(11) Donnie was held 5½ hours before he confessed, T118L 22-29.

(12) But during that time he asked for an attorney and interrogation was terminated for awhile, T334L25-T335L14.

(13) Donnie did not request of the Louisiana deputies that an attorney be provided for him because he was relying on the California officers to provide one, T324L29-T325L10.

(14) He obviously did not comprehend the Miranda warning, T319L10-14;

(15) He was never taken to a probation officer, as required by law.

The entire interrogation of Donnie and Scott Collum was conducted under a cloud of deceit, and nowhere is the deceitful purpose of the officers more apparent than in their misleading of Mr. Mendoza to waive her right to counsel and to waive extradition. She was advised by an honest deputy to seek counsel, T246-2-13. When Sodaro learned of it he became "very upset," went to her home and tried to learn who had given her this good advice, then threatened to place the boys in Glen Helen reformatory where they would be subject to homosexual rape and abuse and told her that they would have

to go to Louisiana anyway. Then under oath he lied about what he was doing, T357L20-T359L22. He lied about what the deputy told Mrs. Mendoza. He lied when he said his interest was only concern for her that caused him to urge her to waive extradition. He lied when he said the boys wanted to go back to Louisiana (he had threatened them with Glen Helen also T343L3-5). He lied when he said he went back to the trailer to clarify a misunderstanding (he went to learn the name of the deputy who had advised Mrs. Mendoza to fight extradition and push her into a waiver). He lied when he said he did not remember whether he had discussed Glen Helen Reformatory with He lied then as he had lied when he denied Donnie asked for an attotney, and as he lied when he denied he talked with Mrs. Mendoza and sent her home, as he lied when he said she did not ask to see her son.

Woodrum – a master at sticking to favorable facts and evading unfavorable ones, has convenient failures of memory, and is not going to contradict his superior. Sergeant Sodaro.

Together, a pair of skilled, experienced police interrogators had Donnie and Scott Collum outclassed to the point where it was no contest, yet the major part of their "class" was deceit and failure to obey the law of their own State.

The deceit in causing the defendant to waive his constitutions rights began at the time of arrest when they hid the real purpose of the arrest. While a police officer need not disclose all of his intentions, he whould not be permitted to deliberately mislead a person to include him to give up his rights.

When Mrs. Mendoza went to the police station to seek release of her sons. She was sent home, and told that police only wanted to ask "routine questions." She was told that someone would be sent to tell her when she could return to get the boys. Later a policeman did, in fact, go to her home to tell her she could see the boys.T243L2-18 also T248L9-

T249L16.

Only then was she told that the boys were implicated in murder, and only then was she allowed to see them.

When the police stated that they only wanted to ask routine questions, they were lying, and this lie, among others, deprived Mrs. Mendoza of the right to protect her sons, and led to their "Waiver" of their rights. This statement about "routine questions" moved the matter from the negative, possibly acceptable, failure to disclose information, to the positive, absolutely unacceptable, misleading and deceiving.

In In re Wesley, 285 So.2d 208 the court quoted approvingly from Gallegos vs. Colorado, 370 US 49, 82 St. Ct. 1209 Wherein "the failure to send for his parents" was a consideration in deciding due process had been violated. Here the parent was present but excluded by the police.

Although Sodaro and Woodrum deny that Donnie asked for an attorney, they nevertheless asked a few more questions, "Just briefly, and then we terminated it." T13L14. They had already been interviewing him 30 to 40 minutes. T14L1-2. The Court may choose to disregard, or even to disbelieve, Donnie's statement that he asked for an attorney, but ought the Court to assume that Donnie is lying and the good policeman telling the gospel truth? Had Donnie not asked for a lawyer, would the questioning have been stopped? After 30 to 40 minutes of fruitless examination, thesubject begins to tremble, becomes very nervous and emotionally upset. First the first time, they are getting results, they have struck a sensitive spot. Is this the time to quit? of course not. This is the time to bore in and get through the cracks in the subjects shell. This is not the time to quit, and allow the subject to compose himself, to patch his cracks. Unless he has asked for a lawyer. Unless Donnie Collum was telling the truth about requesting a lawyer, it would have been ridiculous for the police

to stop questioning him at the very moment that they were nost likely to be successful. These policemen had one purpose in mind to get confessions to murder. They had already resorted to deceit to get the boys away from their mother. They used the theft charge like a subterfuge, while hiding the information that Collum was dead, to wisk the boys away from her. True, they had no duty to disclose Jessie Collum's death, but the whole picture is of a compaign designed and executed to mislead and deceived defendant's mother, to evade the clear, plain law of California re Juveniles and to secure a confession by causing the defendant to waive Constitutional and legal rights by confusion, misunderstanding and deceit.

Sodaro denies Donnie asked for a lawyer, yet he states, T357L10-14, that if a person asks for an attorney he would do exactly what he did in this case –return him to jail. At the very best time to question a prisoner he quite (out of concern for him- although he admits he was presuming him guilty of 4 murders) and returns him to jail? Not very likely.

California law, like Louisiana law, provides that a minor shall not be detained in a jail or lockup unless a judge of the Juvenile Court shall determine that there are no other proper and adequate facilities or unless transferred by Juvenile Court to another court for trial, or after conviction of a felony. Sodaro and Woodrum state that the law is regularly and routinely violated by them.

California W and I Code §625.1(c) provides that a peace officer may take temporary custody of aminor under 18 years of age, without a warrant, whenever the officer has reason to believe that the minor has committed a felony.

The officer has 3 alternatives in handling such minor, California W and I Code 626,

(a) He may release such minor; or
(b) He may prepare in duplicate a notice to appear before

the probation officer of the county in which such minor is taken into custody . . . Upon execution of the promise to appear, he shall immediately release such minor. . ."
(c) He may take such minor without unnecessary delay before the probation officer of the county in which such person was taken into custody . . .and deliver the custody of the minor to the probation officer.

The law of California clearly provides that a minor accused of a felony shall:

(1) Be released, or
(2) Be noticed to appear in Juvenile Court and upon signing a promise to appear be released, or
(3) Be turned over to a juvenile probation officer for detention. This same procedure is provided for Dependent Children at W and I code §307. Clearly had the Legislature of California intended to give police officers a free hand to arrest, detain and interrogate minors they would not have enacted the identical procedure into the law twice.

The law of California does not provide for nor contemplate that a minor should:

(1) Be arrested and detained at a police station.
(2) Held away from parents or attorney in that place.
(3) Interrogated by police officers at all, much less over 12 hours.
(4) Held for 8 hours without notifying Juvenile Hall.

Although these policemen may not believe it, the legislature obvious means that the probation officer not the policeman shall have custody of the minor from the earliest possible moment, otherwise they would not have prohibited them from confining the minor in jail. We can presume that in California, as in Louisiana, it is the people through their legislature, not the

police, who determine what is the law; but, as a practical matter, we can force them to obey it only by suppressing evidence of their unlawful acts. The rule of Mapp vs. Ohio.

While the law of California requires that a juvenile be taken to a probation officer, Woodrum stated that he treated juveniles just like adults in this regard, T33L27-31. In Anderson vs. U.A., 318Us356, 63 S.Ct. 599, the United States Supreme Court held that a confession secured by county officers for Federal Agent with whom they were cooperating was inadmissable because the county officers had violated the Tennessee statute which required that the accused be brough before a magistrate before incarceration. It would be impossible to find a case closer than this one, except in one respect: the Court noted that the law was enforced in Tennessee whereas here we are dealing with officers who make a practice of disregarding the law. Can it be said that their disregard for the law constitutes a tacit repeal of it?

SUMMARY

We concede the validity of the arrest under California and Louisiana law.

We urge the Court that the law of the forum is applicable; but that in addition, the defendant is protected by all applicable California law unless there is a conflict with the law of Louisiana which would then control.

We contend that the Louisiana constitutional provision which makes defendant culpable as an adult applies only after he is formally charged with a capitol offense, but in any event does not operate to deprive him of protective laws during the investigative stages of the case.

We contend that a minor is without legal capacity to waive constitutional rights without the consent of his parent.

WE contend that even applying only the "totality of circumstances" rule this case falls within the purview of In re Wesley, In re Garland and In re White in Louisiana law and People vs. Burton 491 p.2nd 793, in California law, and Anderson vs. US in Federal constitutional law.

APPENDIX H

Pages from Trial and Hearing Transcripts Cited in Petition

TRANSCRIPT OF PROCEEDINGS
STATE IN THE INTEREST OF SCOTTY LYNN COLLUM
VOLUME I

(27)

STATE OF LOUISIANA
IN THE JUVENILE COURT
FOR THE PARISH OF LAFOURCHE

STATE OF LOUISIANA
IN THE INTEREST OF
SCOTTY LYNN COLLUM

NO. 1233

SPECIAL JUVENILE

MOTION TO SUPPRESS CONFESSION

Defendant, Scotty Lynn Collum, through his undersigned attorney, moves to suppress for use as evidence all written and/or taped confessions or other written and/or taped inculpatory statements obtained from mover by certain public officers and/or police officers or deputies, whose names are unknown to mover.

All of said confessions and other inculpatory statements are admissible in evidence because they were not made by mover to said officers or anyone else freely and voluntarily, but were made under the influence of fear, duress, intimidation, menaces, threats, inducements, promises and/or without mover having been advised of his right to remain silent right to counsel, right against self-incrimination and other constitutional rights.

/S/ Maurice J. Serpas

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(55)

THE COURT:

Swear in Detective Woodrum.

THE WITNESS, ROBERT J. WOODRUM, AFTER BEING DULY SWORN TO TELL THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP HIM GOD, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. NAQUIN:

Q. Please state your full name for the record?

A. Robert J. Woodrum. W-o-o-d-r-u-m.

Q. By whom are you employed?

A. I'm employed by the San Bernardino County Sheriff's Office.

Q. In what capacity?

A. I hold the rank of detective.

Q. Detective Woodrum, on June 3rd, 1977, did you have occasion to see one Scotty Collum?

A. Yes, sir.

Q. Where did you happen to see him on this particular day?

A. I first saw him at the Red and White Trailer Park at 16501 "D" Street, City of Victorville.

BY THE COURT REPORTER:

Q. "D" Street?

A. "D" as in David.

BY MR. NAQUIN:

Q. Do you recall the time of day?

A. Approximately 25 minutes after two P.M.

Q. Detective Woodrum, do you see Scotty Collum present in the courtroom?

A. Yes, sir.

Q. Would you please identify him?

(65)

present in the courtroom, the mother of the juvenile in this proceeding.

(PAUSE)

MR. SMITH:

She's been so advised, Your Honor.

(65) THE COURT:

Let the record so reflect. Proceed.

BY MR. NAQUIN:

Q. Detective Woodrum, when you began questioning the individual with reference to the death of his father, what was his physical or emotional reaction to that?

A. At that point I believe when we first told him of the death of his father and family I think it was -- he didn't become emotional, but like it was news to him, he wasn't aware of it up until that point.

Q. You then proceeded to interrogate the individual?

A. Yes, sir.

Q. Okay. How long did this interrogation last?

A. From beginning to end I think we interviewed him in the room probably for two, two and a half hours.

Q. At anytime during this interrogation did you tape the interview?

A. Yes, sir.

Q. When did you tape the interview?

(65) (72)

A. Just shortly after he admitted his participation in the homicides.

MR. SERPAS:

Your Honor, again I must object and ask the witness to refrain from saying exactly what was said or his conclusions of the saying.

(72)

park, your specific purpose was to arrest these two boys for the Louisiana authorities?

A. Yes, sir.

Q. You stated that you explained to these boys the charge on which you were arresting them. Do you remember exactly what you told them?

A. Probably not word for word, but I remember basically what was said, yes, sir.

Q. Could you repeat basically what you said to explain to them about this charge?

A. Yes. After we identified ourselves, I told both of them that we were there to take them into custody on the authority of the Louisiana

(72) (75)

sheriff's office for the theft of an automobile from this state.

Q. That was the extent of your explanation to them?

A. At that point, yes, sir.

Q. How were the boys handcuffed?

A. They were handcuffed in the rear, their hands behind their back.

Q. And you read from the card that you have in your possession their Miranda rights while you were driving the car and them back to the station?

A. Yes, sir.

Q. Had you ever seen Scotty Collum prior to that day?

A. Not to my knowledge, no, sir.

Q. What time did you all leave the station to go to make the arrest?

A. Probably about fifteen minutes before we made the actual contact.

Q. When did you notify the sub-station that you were

(75)

effect or words to this effect, "You

(75)

remember we read your rights," and "Do you remember what they are"?

A. I probably said to him, "Do you recall the rights that I read to you earlier?" and then would say, "Are you still willing to discuss the case with us," or "Do you still want to talk to us?"

Q. When you arrived at the sub-station you indicated that you placed the two boys in one interview room, is that correct?

A. That's correct, sir.

Q. Did you handcuff them to the chair?

A. I don't recall, but we probably would have. It is common that we will remove the cuffs from the individual when he's cuffed to the rear and maybe handcuff him to a chair or to a table. Sometimes we don't handcuff them, but probably in this case we would have.

Q. How did you handcuff them to the chair?

A. Placing one -- leaving one cuff over the wrist and slapping the other cuff or securing it around the arm of the chair.

(75) (94)

Q. How long were the two boys left in the interview room before you and Sergeant Sodaro returned?

A. Maybe fifteen minutes.

Q. During this time you got your notebooks and things together then went back into the room, is that correct?

A. Yes, sir.

Q. Did you all talk to anybody else at that time about the case?

(94)

A. No, sir.

Q. Now, in conducting this interview what is the first thing that you spoke with Scotty about?

A. About the Cadillac that was taken from this jurisdiction.

Q. After this did you have occasion to speak with him concerning the death of his father?

A. Yes, sir. We did.

Q. Prior to this was he again reminded of his rights?

A. Yes, sir. He was.

(94)

Q. Did he again acknowledge --

A. Yes, sir. He did.

Q. At this time did he ask for an attorney?

A. No, sir. He did not.

Q. Did he ask you to stop questioning him?

A. No, sir. He did not.

Q. Did you tape this particular interview?

A. We did, but not at that time.

Q. Okay. When did you tape it?

A. When we went over it the second time.

Q. So Scotty spoke with you concerning the death of his father?

A. Yes, sir.

Q. After which you taped it?

A. Yes. We asked him if he would go over it again and if we could tape it, and he agreed.

Q. You advised him that it was going to be taped?

(94) (99)

A. Yes, sir.

Q. Were the statements prior to the tape and the statements on the tape that Scotty gave the same?

A. The story that was told was the same. Whether

(99)

Q. Were the boys handcuffed when they were in the unit?

A. Yes, sir. They were.

Q. In which manner?

A. They were handcuffed with their hands behind their back.

Q. Were any chains placed on the boys?

A. No, sir.

Q. Detective Woodrum was driving the vehicle?

A. Yes, sir. He was.

Q. You stated that Detective Woodrum read the two Collum boys their rights?

A. Yes, sir.

(99)

Q. Was that while he was driving the vehicle?

A. Yes, sir. It was.

Q. Did they make any statements prior to Detective Woodrum reading the rights?

A. No, sir.

Q. Isn't it true that Officer Searcey was sitting behind you in the rear seat?

A. I said he may have been. I kind of feel that he was probably sitting in the middle but it was possible he was sitting behind me.

Q. When Detective Woodrum read the Miranda rights, did -- did he also read the reverse side of that card in reference to a waiver?

A. Yes, sir. He did.

Q. He read it verbatim?

A. The first statement he read verbatim. The second statement, which we are no longer required to read anymore, once they agree to talk to us, sometimes

out except those arrested on Thursday after transportation and Friday during the day, which would probably have been no more than maybe ten in there.

Q. These would have been adult inmates?

A. They would have been adult inmates, yes, sir.

Q. Are adults booked at this sub-station?

A. Yes, sir.

Q. Would you describe this Interview Room-B that you alluded to on direct examination?

A. The walls are painted, you know, a tannish color.

(105)

It's probably about 8 by 8 to 10 by 10. It has accoustical ceilings. The floor is carpeted. There's a table and depending on how many chairs you want to carry in there.

Q. How many chairs were in there at the time that Scotty was there?

A. There was at least three.

Q. Were you seated in one of the chairs?

MR. SMITH:

Well, Your Honor, I think that's going to become relevant as far as what is the size of the facility and whether there is any mingling with the prisoners and this juvenile.

THE COURT:

Well, you can ask if they all mingled. I think you can ask what the size is, but -- I will go ahead and let you ask it. I'm going to overrule the objection, but if it has relevance it's of a very minimal value. But since it might have some minimal relevance, I will allow it.

MR. SMITH:

Thank you, Your Honor.

BY MR. SMITH:

Q. Would you answer the question?

A. Transportation comes up on Thursday night, because we don't hold anybody there except for Court, and the weekend was coming up, so probably most of them would have been moved

(105)

A. Yes, sir. I was.

Q. Woodrum and Scotty were seated in the other chairs?

A. Yes, sir.

Q. Was Scotty handcuffed to the chair?

A. No. I believe before we started the interview we did unhandcuff him. Prior to that he was probably handcuffed to the chair, yes, sir.

Q. During the period that he was waiting for you and the other officer to come back in the room, he would have been handcuffed to the chair?

A. Yes, sir.

Q. And the doors to this interview room would have been locked?

A. Closed, not locked.

Q. Not locked. There's only one door and no windows?

A. That's affirmative, yes, sir.

Q. What time did you start questioning Scotty in this room?

A. Approximately four o'clock.

(105) (106)

Q. You stated that Officer Woodrum reminded Scotty of his rights prior to the questioning in this room?

A. Yes, sir.

(106)

Q. By reminding him of his rights he just said, "Do you recall the Miranda rights that I have previously given you," or words to that effect?

A. Yes, sir.

Q. And Scotty answered, "Yes"?

A. Yes, sir.

Q. That was the reminder?

A. Yes, sir.

Q. When Scotty answered, "Yes," in reference to recalling his Miranda rights, do you recall exactly what he said?

A. At what point?

Q. At that same point I just talked about, prior to --

A. You mean his acknowledgement of his rights, understanding?

Q. Yes.

A. I believe it was, "Yes."

Q. It could have been, "Yes, I guess"?

A. No. It wasn't, "I guess." It was, "Yes," or "Yeh," something like that.

Q. When you began interrogating Scotty, the first thing you asked him about was the Cadillac automobile?

A. The first thing he was asked about was the Cadillac, yes, sir.

Q. Did he at first deny any knowledge of such a Cadillac automobile?

A. No, sir.

Q. You stated that Scotty made certain inculpatory statements. Was the first such inculpatory statement in reference to the Cadillac automobile or in (107) reference to the murders of Jessie Collum and his family?

A. You will have to explain "inculpatory." I don't believe I understand --

Q. An incriminating statement.

A. Oh, the first ones were in reference to the Cadillac. There was nothing mentioned about the Collum family or deaths until after he had completed his story about the Cadillac and how they got to California, et cetera.

Q. Wasn't it only after you told Scotty that there were certain discrepancies in his story that he made any statement about this Cadillac?

A. No, sir.

Q. You didn't tell Scotty that there were certain discrepancies in his story?

A. There was a point during the interview, and I believe that it was after he was again reminded of his rights and we started talking about the homicides, that the differences or the parts of his story that didn't make sense were brought up.

Q. You had already talked to Donnie Collum at this time?

A. Yes, sir.

Q. After arresting Scotty Collum, when is the first time that you recall seeing Mrs. Peggy Mendoza at the Victorville Sub-Station?

A. My first recollection of seeing Mrs. Mendoza again after the contact at the trailer was as we were leaving the sub-station to go to Ontario Airport.

Q. What time was this?

(108)

A. It seems to me that it was somewhere around ten o'clock.

Q. Did you have a conversation with her at this time?

A. Yes, sir. We did.

Q. What was the nature of that conversation?

A. We talked about the car, and at that time we advised her of the homicides, and she became very upset, and I think we comforted her somewhat and we went into the office with her. And we were running late, so I don't think we stayed very long. But that's basically what it was about.

Q. You told her you were on your way to pick up certain Louisiana police officers?

A. Yes, sir.

Q. You told her that you had taken a statement from her two sons?

A. We had advised her that they had admitted to being involved or participating in the crimes, yes, sir.

Q. At anytime prior to seeing Mrs. Peggy Mendoza at the station after the arrest, did you have any telephone contact with her?

A. Not that I recall.

Q. While interrogating Scotty, did any other officer tell you that Mrs. Mendoza was outside waiting?

A. I don't believe so.

Q. A Deputy Qualls didn't tell you that?

A. Deputy Qualls was the jailer that night, you know, so -- I don't know. He may have been in the front helping the dispatcher, but I don't recall anybody mentioning that she was there.

Q. Did Deputy Qualls interrupt at anytime during this interview?

(109)

A. With Scotty?

Q. Yes.

A. I believe he did.

Q. For what purpose?

A. To advise me that Donnie wanted to see me.

Q. Did you leave at that point?

A. No, sir.

Q. After this initial interview with Scotty, did he request to see his mother?

A. With Scotty, after the initial interview. Well, there was only one interview with Scotty. I don't know if he requested it or that I told him that we were going to let him see his mother.

Q. This was after the tapes were made?

A. Yes, sir.

Q. At no time prior to this did you tell him he would be able to see his mother?

A. Not that I recall, no, sir.

Q. You didn't tell him that, "As soon as we finish making this tape," he would be able to see his mother?

A. No, sir. I don't believe so.

Q. Did you or Officer Woodrum ever specifically ask Scotty if he would like to see an attorney?

A. Other than his rights?

Q. Right.

A. No.

Q. Did you ever ask him if he would like to see his mother?

A. No.

Q. At the time you arrested these boys you had intended (110) to interrogate them in reference to the murder of Jessie Collum and his family?

A. No. I don't believe we were.

Q. You had knowledge of the Jessie Collum murder, though, at the time you arrested them?

A. Oh, very definitely, yes, sir.

Q. And as far as you were concerned Donnie and Scotty Collum were suspects?

A. Yes, sir.

Q. Did you or Officer Woodrum in your presence ever ask Mrs. Peggy

Mendoza whether or not she would like to be present during these interviews?

A. I did not ask her that, no, sir.

Q. And Sergeant Woodrum, did he?

A. Not that I recall, no, sir.

Q. Did you ever check to see whether the handcuffs were cutting Scotty Collum's wrists?

A. No, sir.

Q. Did you ever inquire of Scotty Collum whether the handcuffs were too tight?

A. No, sir.

Q. Do you recall loosening the handcuffs after the taped interview was done?

A. I don't think the handcuffs were on during the interview.

Q. But the handcuffs were on before the taped interview began?

A. The handcuffs were on from the place of arrest to the sheriff's office. They were changed from behind his back to the chair in the interview room. And after we started -- you

know, before (111) we started the interview we removed them.

Q. What time did the detectives from Louisiana arrive at the Victorville Sub-Station?

A. It seems to me that it was close to midnight or maybe even after midnight.

Q. Shortly after their arrival, did you play this tape that you received from Scotty for these detectives?

A. It was -- I believe it was played for them on the way back from the airport in the car.

Q. In the car on the way back from the airport?

A. Uh-huh. (Indicating affirmatively)

Q. Besides playing the tape, you did discuss the nature of the statements made with these detectives?

A. Yes, sir. We did.

Q. During this interview with Scotty Collum, was he given anything to drink?

A. I believe that I got him some water, yes, sir.

(111) (112)

Q. Was he given any food during this interview?

A. I don't believe we gave him food. I think I gave him water, and I think I gave him cigarettes.

Q. And during this interview did Scotty ask what would happen if he admitted certain crimes?

A. Which interview are you talking about? I mean, which segment of the interview?

Q. Well, at any point after four p.m., during that first two or two and a half hour period.

A. After we talked about some of the fallacies in the story of the Cadillac and his father going to Texas with the family, I think he said something that, "Yes. I was involved in it," and you know, (112) "What was going to happen to me," you know. And I think at that time we discussed the California juvenile law and what could possibly happen to him.

Q. Specifically, would you state what you told him, as best you can recall?

A. Well, I told him that I was not

(112)

familiar with the juvenile laws of the state of Louisiana and all I could advise him was what would happen or what could possibly happen if his case was a California case. And I told him because of his age and if he had no involvement with law enforcement, you know, we would write up the case, submit it to the juvenile authorities, and the juvenile court at that time could either agree to accept the case or they could disqualify him as a juvenile and refer back to adult court, that he could go to the youth authority until I think he was 25. But basically it's pretty difficult to tell someone in California exactly what's going to happen to them.

Q. You did tell him, though, that the juvenile authorities could refuse to accept charges against him?

A. I believe I did, yes, sir.

Q. And you explained the effect of such a refusal?

A. That he would be tried as an adult, yes, sir.

Q. Did you also tell him that if they refused to accept charges he could possibly be released?

(112) (113)

A. No, sir.

Q. Now, when you were explaining the California law to him, you didn't bother to explain the Miranda rights again at this time, did you?

(113)

A. No, sir.

Q. But you did explain a good bit about the California law as far as juveniles?

A. I explained to Scotty what he asked me to explain to the best of my knowledge and ability.

Q. You didn't explain to him at that time that any statement he said could be used against him in a court of law?

A. No, sir.

Q. In the early morning hours of June 4th did you have occasion to again return to the Red and White Trailer Park?

A. Yes, sir. I did.

Q. Specifically, where did you go in the trailer park?

A. To talk to Mrs. Mendoza.

(113) (118)

Q. What was the nature of that visit, conversation?

MR. NAQUIN:

Your Honor, at this time the State is going to object. I fail to see any relevancy whatsoever as to what took place at the trailer park in the early morning hours of June 4th, many hours after the statements had been obtained. The motion to suppress is to show the free and voluntary nature of the statement which was completed as six o'clock.

MR. SMITH:

Your Honor, I think if -- of course, we don't know exactly what the nature of the conversation was at this time, but I think if the nature of the conversation dealt with

(118)

he won't be here on September 7th, I will allow this inquiry to proceed.

BY MR. SERPAS:

Q. Would you answer the question?

(118)

A. Would you ask me again?

Q. Did you at that time advise Mrs. Mendoza that she did not need an attorney for the two boys?

A. In reference to extradition I advised her that it probably would be cheaper or economically better if she didn't get an attorney.

Q. Did you tell her that it would be a waste of money to hire an attorney? Those words.

A. Well, I may have said that. I don't know.

Q. And that was the sole purpose for your visit that night?

A. Well, yes, basically because of extradition proceedings, yes, sir.

Q. You stated that when you were leaving the station you met Mrs. Mendoza in the lobby, I believe when you were leaving to go pick up the Louisiana authorities?

A. No, sir. I didn't --

Q. You didn't meet Mrs. Mendoza at all?

A. I didn't say in the lobby.

(118) (172)

Q. Okay. Well, where did you meet her?

A. Out in front of the office.

Q. At that time was there a discussion by Mrs. Mendoza or between Mrs. Mendoza and you and Officer Woodrum in reference to hiring an attorney?

A. No, sir. There was not.

Q. About 9:30 or ten o'clock at night on June 3rd was

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Q. Do you see him in the courtroom?

A. Yes, sir. The gentleman sitting over here in the brown shirt.

MR. BARBERA:

Let the record reflect that the witness has identified the juvenile, Scotty Lynn Collum.

BY MR. BARBERA:

Q. What happened after that, Detective Rodrigue?

A. We had -- after advising her of why we were there and asking her if she would like to be present during the

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interview, and of course she declined to be present, she suggested that we talk to Scotty about the matter first, relative that he would probably be, you know, cooperative, that he would be willing to talk to us about the incident.

Q. Did you in fact interview Scotty Collum on that day?

A. Yes, sir. We did.

Q. About what time was it when you first saw Scotty Collum?

A. Approximately one o'clock in the interview room there at the Victorville Sub-Station.

Q. Who was present during the interview?

A. Present during the interview was Scotty Lynn Collum, myself and Major Diaz.

Q. Prior to the interview with Scotty, did you or Major Diaz advise Scotty of his rights, Miranda warnings?

A. Yes, sir. Major Diaz advised him of his Miranda rights from the card we carry on our persons while he was filling out -- I believe it was the B. of I. Sheet, I believe, he filled

(172) (176)

out.

(176)

than yourself, Scotty, and Major Diaz?

A. Just the three of us.

MR. BARBERA:

Tender the witness.

CROSS EXAMINATION

BY MR. SERPAS:

Q. Lieutenant Rodrigue, was the time you saw Scotty Collum at the Victorville Sub-Station the first time you had ever seen him?

A. Yes, sir. It was.

Q. Where was he when you first saw him in Victorville?

A. When I first observed him it was in the interview room.

Q. Who directed you to that interview room?

A. One of the two gentlemen from California. I don't recall which one.

Q. Did Mr. Woodrum?

(176) (177)

A. It could have been.

Q. Isn't it a fact that he was present in the interview room with you and Major Diaz at the beginning of the interview with Scotty Collum?

A. Not that I recall.

Q. Was Donnie handcuffed when you went into the interview room?

A. No, sir.

Q. At the beginning of the interview with Scotty, when you were filling in the I.D. Sheet, it was you or Major Diaz that filled it in?

A. It was Major Diaz.

Q. And it was Major Diaz that discussed his rights under the Miranda decision with Scotty?

(177)

A. He verbally advised him of his rights under the Miranda decision.

Q. And that at the beginning of this tape Major Diaz again discussed his rights with him?

A. He -- to my recollection, he asked him if he understood them and brought

(177)

out it was the same that the California authorities had advised.

Q. The discussion about his rights that are on the tape and the discussion at the beginning of the interview, were they basically the same?

A. Primarily pertaining to the same material.

Q. And it was done in about the same manner?

A. No, sir. The rights given were read off of a card, and the statement at the beginning of the tape would have been did he understand them and such as that.

Q. Were any tapes played in the car between the airport and the Victorville Sub-Station?

A. There was some tape played in the car. I could not tell you which.

Q. You're not sure as to whether or not all or part of one or more tapes were what was played in the car?

A. I understood that there was a tape of Scotty and Donnie. We listened to portions of a tape, or it possibly could have been two tapes.

Q. Did either Woodrum or Sodaro advise

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you that the boys' mother was at the station waiting for you all to come?

A. I seem to recall that we were told that she was there.

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Q. And what did you do?

A. Well, I went to the manager's apartment, because he had a telephone. And the boys had told me that they had moved, and I didn't know what Jessie's address was. So I figured if he had issued a warrant on this car that the police station would have his address and how to get ahold of him. And all these years Jessie had never paid child support. I never asked him for it. And I was going to tell him that if he didn't drop those charges I was going to press child support against him. And whenever I called the police down here I got disconnected three times before I got somebody that could tell me what was going on. And I asked if they could give me Jessie's address, you know, some way to get ahold of him. And he said, "Jessie's just been shot." And I -- you know, the first thing you say is, "My Lord." You don't -- you know -- after all, I was married to him for twelve years. And so he told me that he couldn't give me any information as to when or anything about it because it was up to the coroner. And so I said, "Well, did Lenore sign any charges on the car?" And he said, "No, 'mam. Lenore didn't sign anything." So I put the phone down and I went to the police station and I told the lady there

(224)

(225)

-- there was I guess a secretary or whatever you call it that answers the telephone. And I told her that I wanted to talk to the sheriff. And she told somebody else -- there (225) was a blond-headed man behind the desk also. And officer Sodaro came out, and I said, "there's been no warrant on that car," you know, "Jessie hadn't signed a warrant or Lenore hadn't signed a warrant." And I said, "You'll have to release my boys." And he said, "Well, now we just want to talk to them, ask them some routine questions," and he said, "Go on back home." And he said , "Whenever we get through," he said, "I'll send somebody over to tell you so that you can come get the boys." Okay. I went back home and I waited. And I kept calling in the meantime, and I must have called three or four or five times. And about -- it had to be approximately around 9:30 or ten. A policeman came back up there to the trailer, and he told me, "You can see your boys now." So I went back to the police station. And Officer Woodrum met outside the sheriff's office, you know, where the boys were. And he told me, he said, "I've got some bad news for you." And see, at this time I didn't know any of this other -- I thought Jessie had been shot -- you know, my boys had been home a week nearly. And he said,

"Your boys have confessed to four murders," and I went all to pieces. And so he told me, he said that I could see them, you know. So I went in. Me and Debbie was together all this time. And I went in and I sat down --

Q. Who is Debbie? (228)

approximately -- it had to be after twelve. It might have been one. And I told them that I was not going to sign any extradition papers because there was a -- Officer Sodaro called him a rookie. He wasn't a policeman like -- well, I guess he was a policeman, but he wasn't like a detective or anything. And he was standing here at the corner of the desk, and he told me that if he was me that he wouldn't sign extradition papers on the boys. So I went back in that little room there and I told the boys, I said, "I'm not going to sign extradition papers because it may not be the thing to do." So after I went home Officer Sodaro and Officer Woodrum came up to the house, and they wanted to know what that policeman's name was and that he had no right to tell me that at all. And I didn't give the man's name because the man was trying to help me and he didn't mean any disrespect to the police department, I'm sure, but he thought he was advising me right. And so they told me that

if I didn't sign extradition papers that all they had to do was get the Judge -- I mean the governor to sign it and that they would extradite them anyway. And Officer Sodaro told me that he had been a guard at Glen Helen Reformatory which is where they were going to send the boys. And he told me, he said, "Mrs. Mendoza," he said, "You don't want your boys in Glen Helen." He said, "It's a rough place." He said, "I was a guard there for five years,"

(229) and he said, "Believe me, you don't want your boys there." So I decided at that time to go ahead and sign extradition papers, because I figured if I didn't it would just make it rougher on them when they got down here, you know. And then I went and saw them the next morning. We had to go before the Judge in San Bernardino.

BY MR. O'NIELL:

Q. Now, Mrs. Mendoza, at the time that you were told by the Louisiana sheriff -- the Lafourche Parish Sheriff's Office that Jessie had been shot, were you told that Jessie was dead?

A. Yes. He told me that he --

Q. The first time?

A. No. He just told me that he had

been shot and that he couldn't tell when because he didn't know, that it was up to the coroner. And when he said coroner, I presumed that he was dead.

Q. But you assumed that this had been something that had occurred after the boys got back home?

A. Well, yes.

Q. Okay. Did you at anytime during this night have occasion to look at Donnie's wrists?

A. Yes, I sure did.

Q. What was the condition of them?

A. His wrists were bruised that night or the next morning when we went to -- I met them at the San Bernardino Courthouse to sign the extradition papers, and he was bruised on the wrist at that time too.

Q. Could you describe for the Judge where and how his wrists were bruised? (230)

A. Well, just where the handcuffs had been. He was -- his wrists were blue.

BY THE COURT:

Q. On both wrists?

A. On both wrists, yes, sir.

BY MR. O'NIELL:

Q. Were there any cuts on them or scratches?

A. No. I didn't notice any cuts or scratches.

Q. Mrs. Mendoza, when you first went to the sheriff's office at Victorville, did you ask to see the boys?

A. Yes, I sure did. That's what I was there for.

Q. You stated that you were told to go home. Do you remember exactly how you were told to go home?

A. He just told me, he said, "I realize there's no charges on the car." He said, "We're just holding them for --" how did he put that? Oh, he said, "Routine. He said, "Routine questioning." And I thought maybe they were going to ask them if they knew anything about, you know, people that might have been around or anything like that. I didn't know when it had happened, and I didn't associate it with the boys at all at that time.

Q. Why didn't you wait until they finished --

(230) (232)

A. What?

Q. Why didn't you wait until they finished their questioning to bring the boys home?

A. Because they wouldn't let me. They told me to go home and that they would send somebody out there and tell me when I could come back. And he told me that I could call, which I did, several times. But the man wouldn't give me any information because (232)

in there. And I believe the district attorney, the name, you know, how to get ahold of him and everything. And he didn't never say that he was going to go in and talk to the boys. He never did tell me that. He said that he would -- I thought -- see, there was a whole room of policemen that had been in and out of this -- I guess where they were questioning the boys. That place was thronged with policemen.

Q. What kind of policemen?

A. Well, there was some of them like younger guys, you know, and some were older, and I would say there was never under eight men back in those hallways and things. See, I was sitting -- like, you go in --

(232) (241)

there's a big desk thing. That's where the boys was. And I was talking to them all the time I was waiting for Officer Diaz and whatever that other man, Dennis Rodriguez or Rodicule, whatever his name is.

Q. Were these uniformed policemen?

A. Yes. Part of them were. Now, Officer Woodrum, the best I remember, I believe at the time of the arrest he had his uniform on. I'm almost sure he did. But whenever we got down there he had on a Hawaiian -- like a little sports shirt, you know, a short-sleeved shirt. And even whenever we talked to him there in the -- he called us in, you know, to talk to them before we talked to the boys, and was telling me how these people were killed, you know, and different things that (241)

A. Well, I was shaking all over and I was bawling.

Q. You were very upset, to say the least?

A. Yes. I was.

Q. You remained upset for the remainder of the night?

A. No. I prayed and the Lord gave me

strength to bear it. That's exactly what happened. And I prayed with my boys also.

Q. You did speak to your sons?

A. Yes. I did.

Q. Did either of them claim that they had been mistreated?

A. Mistreated?

Q. Yes. 'mam.

A. I asked Scotty Lynn why he had confessed or why he said what he did or whatever, and he said, "Mother, if they ask you questions for that long," he said, "you'd say you done it too."

Q. That's his exact --

A. That's his exact words. I swear to God.

Q. But neither of them complained of any force or physical pressure or anything like that, correct? I mean, they had not been physically abused in any manner that they complained of?

A. No. I don't think they had been beat or anything like that, no.

Q. There was no mention of that, certainly, correct?

A. No. Not physical abuse, no.

Q. When Major Diaz first approached you and was either introduced to you by someone else or introduced himself, did he tell you the purpose why he was there?

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JUVENILE COURT
17TH JUDICIAL DISTRICT
PARISH OF LAFOURCHE
STATE OF LOUISIANA

STATE OF LOUISIANA

IN THE INTEREST OF

SCOTTY LYNN COLLUM

SPECIAL JUVENILE NO.1233 DIVISION "A"

****

REASONS FOR JUDGMENT ON MOTION TO SUPPRESS

****

STATEMENT OF FACTS

On May 27, 1977, Jessie Collum, his second wife, Lenora, and their children, Anna and Jeffrey were killed in or near the Collum trailer in the Four Point Heights subdivision near the Raceland community in the Parish of Lafourche, State of Louisiana. All of these individuals had been shot several times, and Jessie Collum was stabbed twice. On May 29, 1977, Donnie Collum (age 15) and Scott Collum (age 14), the sons of Jessie Collum and his first wife, Mrs. Peggy Mendoza, were stopped by police authorities in Benson, Arizona in a 1974 Cadillac automobile belonging to Jessie Collum. The vehicle was left in Arizona and Scott and Donnie Collum were turned over to Mrs. Mendoza, and went to her home at the Red and White Trailer Park in Victorville, County of San Bernardino, California. On Wednesday, June 1, 1977, the bodies of the Collum family were discovered. Police authorities in Lafourche Parish determined at that

time that the 1974 Cadillac and Donnie and Scott Collum, who had been living with their father, were missing. On the night of June 1, 1977, and the morning of June 2, 1977, the Lafourche Parish Sheriff's Office sent out nationwide bulletins for the location of the Cadillac automobile belonging to Jessie Collum. On June 2, 1977, at 10:18 A.M. Central time the Lafourche Parish Sheriff's Office sent a bulletin to the San Bernardino County Sheriff's Office requesting information concerning the 1974 Cadillac and the location of Don Franklin Collum. On June 3, 1977, the Lafourche Sheriff's Office received information from the San Bernardino County Sheriff's Office concerning the location of Donnie and Scott Collum.

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At approximately 4:30 P.M. Central time (2:30 P.M. Pacific time) warrants were issued in Louisiana for the arrest of Donnie Collum and Scott Collum for theft of the 1974 Cadillac. This information was telephoned to the San Bernardino County Sheriff's Office and then Sergenant Charles J. Sodaro, Detective Robert J. Woodrum and Detective Dennis Searcy went to trailers nine and ten at the Red & White Trailer Park, 16501 "D" Street, Victorville, California, and apprehended Donnie and Scott Collum. They were advised that they were charged with auto theft in the State of Louisiana, were handcuffed and placed in the Sheriff's unit.

Their mother, Mrs. Peggy Mendoza, who was present on the premises, was advised that they were being taken into custody for Louisiana for auto theft and told that if she would come down to the Victorville Sheriff's Office Sub-station she would be given more details. In the Sheriff's vehicle while going from the trailer park to the sub-station, Detective Robert J. Woodrum read the Miranda warning to Donnie and Scott Collum from a Miranda card that he carried on his person and they each individually advised him that they understood their rights. Neither of the two appeared to be under the influence of alcohol or any drug at this time. When they arrived at the sub-station the two were uncuffed and placed in separate interview rooms. At approximately 3:00 P.M. (Pacific time) Detective Woodrum and Sergeant Sodaro commenced an interview with Donnie Collum. He was reminded of his Miranda rights, which he acknowledged, and asked if he would speak to the officers concerning the theft of the car. He responded yes. He was then questioned concerning the the possession of the Cadillac. He was thereafter again reminded of his Miranda rights and told that his father had been shot to death. At this time he became very nervous and denied any involvement in the death. The interview was thereafter teminated at approximately 3:30 P. M. At approximately 4:00 P.M Detective Woodrum and Sergeant (295) Sodaro comm-

enced taking a taped statement from him at 12:55 A.M. on June 4, 1977, (296) and this statement was concluded at 1:28 A.M. The officers then proceeded to interview Donnie Collum. Major Diaz read the Miranda rights to him from a Miranda card and Donnie indicated that he understood these rights. A taped statement was commenced at 1:47 A.M. and concluded at 2:08 A.M. On June 4, 1977, warrants of arrest for the murders of the Collum family were obtained from Judge Bernard L. Knobloch in Labourche Parish. On that same date Donnie Collum and Scott Collum, in the presence of their mother, waived extradition proceedings. On June 5, 1977, Major Diaz, Detective Rodrique and Donnie and Scott Collum left California to return to Louisiana. On June 8, 1977, a petition was filed with the Court by the Juvenile Officer of Lafourche Parish alleging that Scotty Lynn Collum was a delinquent child for the first degree murders of Jessie Collum, Lenora Collum, Anna Collum and Jeffry Collum and for auto theft. On July 18, 1977, this motion to suppress was filed by the defendant and this matter was heard on August 30, 31, and September 7, 1977. The Court ordered the transcript and memoranda from the parties and this motion to suppress was thereafter taken under advisement.

JURISDICTION

The juvenile court is the proper jurisdiction to consider the charges

lodged against Scotty Lynn Collum. Article V, Section 15, Louisiana Constitution of 1974; R.S. 13:1570 A (5); State v. Dubois, 334 So 2d 412 (1976).

LAW APPLICABLE TO THESE PROCEEDINGS

Since the arrest and the interrogations of the juvenile occurred in the State of California, the question is raised as to whether or not the law of California is applicable to any aspect of this case.

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With reference to substantive law, the rule of lex loci delicti is applicable and the substantive law of Louisiana prevails since the offenses charged occurred in this state. This has been conceded by the parties. State v. Hopkins, 171 La 919, 132 So 501 (1931); 15 A Corpus Juris Secundum, Conflict of Laws, Sections 12 (1) and (3) at pages 451 and 464 to 466.

With reference to evidence and its admissability, the rule of lex fori is applicable and would require that the law of the forum, Louisiana, would be determinitive. Harnischfeger Sale Corporation v. Sternberg Company, 179 La 317, 154 So 10 (1934); Wasson v. Gatling, 184 So 596 (2nd Cir, 1938); 15 A Corpus Juris Secundum Conflicts of Laws, Sections 22 (1) and (9) at pages 524 to 529 and 540 to 542; 31

Corpus Juris Secundum Evidence, Section 5 at pages 821-2.

VALIDITY OF THE ARREST OF THE DEFENDANT

The defendant claims that his arrest in California for theft of an automobile in Louisiana was illegal and that therefore any statements that he gave to the California and Louisiana authorities are illegally obtained and therefore inadmissible in these proceedings. The facts show that on the afternoon of June 3, 1977, Detective Robert Woodrum of the San Bernardino County Sheriff's Office contacted the Lafourche Parish Sheriff's Office and advised that Donnie and Scott Collum had been located in Victorville, California. Major Norman R. Diaz of the Lafourche Parish Sheriff's Office and Mr. Walter K. Naquin, Jr., of the District Attorney's Office of the 17th Judicial District then contacted Judge Bernard L. Knobloch to obtain warrants for the arrest of Donnie and Scott Collum for auto theft. Judge Knobloch was advised by telephone of the facts upon which the affidavits and warrants were based and he advised that he would issue the warrant. Detective Chris (298) Boudreaux of the Lafourche Parish Sheriff's Office then brought the affidavits and warrants to Judge Knobloch's office for execution. After the affidavits and warrants were executed, the San Bernardino County Sheriff's Office was notified that the warrants had been issued and was request-

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ed to arrest Donnie and Scott Collum on the charge of auto theft. Major Diaz and Detective Dennis Rodrique then secured the afficavits and warrants from Detective Chris Boudreaux and left Lafourch Parish to fly to California to pick up Donnie and Scott Collum. See pages 101, 102, and 103 of the transcript; page 230 of the testimony of Detective Chris Boudreaux; and page 237 of the testimony of Judge Bernard L. Knoepoch.

The defendant contends that he was arrested prior to the time that a warrant was issued for his arrest. The evidence does not support this contention. The defendant was validly arrested pursuant to a warrant lawfully issued by a court of competent jurisdiction in the State of Louisiana. It is clear under the law that a peace officer may arrest a person when he has received positive and reliable information that another peace officer holds a warrant for the person's arrest. Article 213, Louisiana Code of Criminal Procedure. Further, even if a lawful warrant had not been issued a police officer may arrest a person who has committed a felony, even though the offense was not committed in the presence of the officer, when the peace officer has reasonable cause to believe that the person to be arrested has committed the offense. Article 213, Louisiana Code of Criminal Procedure. Even in the absence of a warrant, Detective Woodrum with the information supplied to him by

the Lafourche Parish Sheriff's Office had sufficient probable cause to believe that a felony had been committed and that the defendant in this proceeding was one of the persons who had committed it. Under the juvenile law of Louisiana any peace officer may immediately take into custody any child who is found violating (299) any law or ordinance. R.S. 13:1577 B. Further under Louisiana law, a Judge has authority to place a child in detention if it appears from an affidavit that such is necessary under the facts and circumstances of the case. R.S. 13:1575 C.

The Louisiana Supreme Court has consistently held that a technical illegality in an arrest does not impair the validity of a subsequent confession freely and voluntarily given after full Miranda warnings. State v. Unzueta, 337 So 2d 1102 (1976); State v. Jackson, 303 So 2d 734 (1974); State v. Harris, 297 So 2d 431 (1974); State v. Simien, 178 So 2d 266 (1966).

AUTHORITY OF MINOR TO CONSENT TO CONFESSION

The defendant urges that since he was 14 years of age at the time that he gave his confessions that he could not legally waive his constitutional rights and consent to give statements without the permission and/or presence of his mother. A person under the age of 18 is classified

as a minor (Article 37 of the Civil Code), a person under 17 is classified as a child (R.S. 13:1569 (3)), and a person is considered exempt from criminal responsibility under 10 years of age (R.S. 14:13).

It is hornbook law in Louisiana that a minor 17 years of age who is subject to the jurisdiction of the criminal district court can give a confession without parental consent. A juvenile charged with a capitol offense and subject to the jurisdiction of the criminal district court can give a confession without parental consent. In State v. Ross, 343 So 2d 722 (1977) a case dealing with a 16 year old charged with aggravated rape the Louisiana Supreme Court observed at page 725 of the Southern Reporter as follows:

> Before a written confession can be introduced in evidence, the state has the burden of affirmatively proving that it was free and voluntary and not made under the influence of fear, duress, intimidation, menaces, inducements or promises. La. R.S. 5:451 (300) La. Code Crim. P. art. 703 (C). It must also be established that an accused who makes a confession during custodial interrogation was first advised of his Miranda rights. Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed. 2d 694 (1966). A confession need not be the spontaneous act of the accused and

> may be obtained by means of questions and answers. La. R.S. 15:453; State v. Simmons, 340 So.2d 1357 (La. 1976). While close scrutiny is required in determining whether the state has met its heavy burden of demonstrating that the confession of a juvenile was free and voluntary, we have held that the age of a defendant does not of itself render a confession involuntary. State v. Sylvester, 298 So. 2d 807 (La. 1974). The voluntariness of the confession is a question of fact. State v. Demourelle, 332 So. 2d 752 (La. 1976); State v. White, 321 So.2d 491 (La. 1975)
>
> It is well settled that admissibility of a confession is a question for the trial judge; its weight is for the jury. Conclusions of the trial judge on the credibility and weight of testimony relating to the voluntariness of a confession for the purpose of admissibility will not be overturned on appeal unless they are not supported by the evidence. State v. Hollingsworth, 337 So.2d 461 (La. 1976); State v. Sims, 310 So.2d 587 (La. 1975). (Emphasis added)

A juvenile who is charged with a non-capitol offense but whose case has been transferred to criminal district court may give a confession without parental consent. In State v. Hall, 350 So 2d 141 (1977), a

case dealing with a 16 year old charged with armed robbery who was transferred from the juvenile court to the criminal district court pursuant to R.S. 13:1571.1 et seq. for trial as an adult, the Louisiana Supreme Court at page 144 of the Southern Reporter observed as follows:

> La. R.S. 14:451 provides that, before, a confession can be introduced into evidence, the state has the burden of affirmatively proving that it was free and voluntary and not made under the influence of fear, duress, intimidation, menaces, threats, inducements or promises. It must also be established that an accused who makes a confession during custodial interrogation was first advised of his Miranda rights. Miranda v. Arizona, supra. While close scrutiny is required in determining whether the state has met its heavy burden of demonstrating that the confession of a juvenile was free and voluntary, we have held that the age of a defendant does not of itself render a confession involuntary. State v. Ross, 343 So.2d 722 (La. 1977) State v. Sylvester 298 So.2d 807 (La. 1974).

See also West v. United States, 399 F.2d 467 (5th Cir. 1968) cert. denied, 393 U.S. 1102, 89 S.Ct. 903, 21 L.Ed.

2d 795 (1969)

> The record reflects that defendant in this case was fully informed of his Miranda rights on several occasions and that he signed a waiver of rights form. It additionally demonstrates that defendant was not threatened, abused, coerced or promised anything in return for his confession. Defendant presented no evidence to controvert the voluntary nature of his confession. After reviewing the record, we are convinced that the state satisfied its burden of affirmatively proving that defendant's confession was freely and voluntairly made after defendant had been fully advised of his Miranda rights. Accordingly, since there is no constitutional requirement of further "warning," the trial judge did not err in denying defendant's motion to suppress and in admitting his confession in evidence. (Emphasis added)

State v. Ghoram, 328 So 2d 91 (1976). Two cases dealing with confessions of juveniles in the juvenile courts support this view. In Re Campbell, 344 So 2d 711 (2nd Cir. 1977); In Re Melancon, 259 So 2d 609 (4th Cir, 1972). CF: In Re Holifield, 319 So 2d 471 (4th Cir. 1975). This view is also shared by most jurisdictions. West v. United States, 399 F. 2d 467 (5th Cir, 1968), cert. denied, 393 U.S. 1102 (1969); State v. Hardy, 107 Ariz. 583, 491 P. 2d

17 (1971); People v. Lara, 67 Cal. 2d 365, 432 P. 2d 202 62 Cal. Rptr. 586 (1967), cert. denied, 392 U.S. 945(1968); T.B. v. State, 306 So. 2d 183 (Fla. App. 1975); State v. Dillon, 93 Idaho 698, 471 P.2d 553 (1970), cert denied, 401 U.S. 942 (1971); People v. Pierre, 114 Ill. App. 2d 706 (1969), cert. denied, 400 U.S. 854 (1970); Commonwealth v. Cain, 361 Mass. 224, 279 N.E. 2d 706 (1972); State v. Hogan, 297 Minn. 430, 212 N.W. 2d 664 (1973); People v. Stephen J.B., 23 N.Y.2d 611, 256 N.E.2d 344, 298 N.Y.S.2d 489 (1969); State v. Dawson, 278 N. C. 351, 180 S.E. 2d 140 (1971); State v. Carder, 9 Ohio St. 2d 1, 222 N.E.2d 620 (1966); State v. Raiford, 7 Ore. App. 202, 490 P.2d 206 (1971); Commonwealth v. Moses, 446 Pa. 350, 287 A. 2d 131 (1971); Vaughn v. State, 3 Tenn. Crim. App. 54, 456 S. W.2d 879 (1970); Theriault v. State, 66 Wis. 2d 33, 223 N.W. 2d 850 (1974); Mullin v. State, 505 P. 2d

 305 (Wyo), cert. denied, 414 U.S. 940 (1973). Parental presence and/or consent is apparantly only required in six states, two by judicial decision and four by statute. Lewis v. State, 259 Ind. 431, 288 N.E. 2d 138, 142 (1972); In re K.W.B., 500 S.W. 2d 275 (Mo. App. 1973); Colo. Rev. Stat. Ann. § 19-2-102 (3) (c) (I) (1973); Conn. Gen. Stat. Ann. § 17-66d(a) (West Supp. 1976); N.M. Stat. Ann. § 13-14-25 (a) (1954); Okla. Stat. Ann. tit. 10, § 1109 (a) (West. Supp. 1976).

At the time that Scott Collum was arrested his mother, Mrs. Peggy Mendoza,

was told of the charges against him and advised that if she came to the Victorville Sheriff's Sub-station she would be given more details. See page 37 of the transcript. Mrs. Mendoza visited with Donnie and Scott Collum between 9:30 p.m. and 12:00 midnight. Prior to taking a statement from Scott collum, Major Norman R. Diaz spoke to Mrs. Mendoza and secured her permission to speak with Scott. She advised Major Diaz at that time that she had been informed of the investigation by the California authorities and that Major Diaz should speak to Scott first as he would be the most cooperative. She was asked if she wished to be present at the questioning and she declined to do so and said that she had heard it before. See page 90, 126, and 127 of the transcript.

No Louisiana jurisprudential or statutory authority has been found to directly support the requirement of parental presence and/or consent for the validity of a minor and/or juvenile giving a confession. Such is clearly not the rule for 17 year old minors or for juveniles under 17 who are subject to the jurisdiction of the criminal district court. The great weight of authority supports that rule that a minor under 18 or a child under 17 can consent to give statements to police authorities and waive his constitutional rights without parental consent and/or presence.

Age and/or parental presence is a factor in determining the free and voluntary nature of the confession but it is not controlling. This court is of the option that this is the better rule and will apply it to the facts of this case.

OBTAINING CONFESSION OF MINOR AT POLICE STATION

The defendant alleges that the fact that the confessions were obtained from the defendant at the Victorville Sheriff's Sub-station in view of his age of 14 and contrary to the law of California and Louisiana (R.S. 13:1577) renders them inadmissible. In support of this proposition the defendant cites the cases of In re Wesley, 285 So 2d 308 (4th Cir, 1973), In re Garland, 160 So 2d 344 (4th Cir, 1964). The defendant also cites R.S. 13:1577 C which provides as follows:

> Except as hereinafter provided, no child shall be confined in any police station, prison, or jail, or be transported or detained in association with criminal, vicious or disoluted persons. A child 15 years of age or older may be placed in a jail or other place of detention for adults, but in a room or ward entirely separate from adults.

Scott Collum was not "detained in association with criminal vicious or disolute persons." After he was brought to the Victorville Sub-station he was either kept

in an interview room or in the juvenile section of the facility. It is clear that his detention was authorized by the warrant issued by Judge Knobloch. Was Scott Collum "confined" in the Victorville Sheriff's Sub-station? In drafting the first sentence of Sub-paragraph C of R.S. 13:1577 the legislature used the word "confined" and then the disjunctive "or" and thereafter used the word "detained". It could be argued that by using this construction that the legislature intended that "confined" be given a different connotation than "detained" and that the mere detention of a juvenile in such a (304) place during the initial stages or commencement of an investigation for a short period of time does not constitute a "confinement".

The Louisiana Supreme Court has rendered admissible confessions of juveniles who were subjects tothe jurisdiction of the district court even though they had been given in police stations, police headquarters, or the district attorney's offce. State v. Ross, supra; State v Whatley, 302 So 2d 123 (1975); State v. Sylvester, 298 So 2d 807 (1974). It would appear that the better rule in cases of this type is that the fact that a confession was taken at a police station is a factor to be considered in determining the free and voluntary nature of the confession and as a part of the "totality of the circumstance", but that such a factor is not in and of itself controlling. In re Campbell, supra; In re Melancon, supra, West v. United States,

supra; CF In re Holifield, supra.

Where a constitutional right has been right has been violated either in advising a person of his right to counsel or his right against self incrimination a confession subsequently given is inadmissible. Miranda v. Arizona, 384, US 436, 86 S Ct. 1602, 16 L.Ed. 2d 694 (1966). Violation of a statutory mandate which specifically applies to the admissibility of confessions will render it inadmissisible. R.S. 15:451. However, R.S. 13:1577 is not a constitutionally granted right nor is it a provision of our statutory law which is specifically directed to the admissibility of a confession. Accordingly, it is the opinion of this court that the better rule is that violation of such a statute should be a factor to be considered but is not controlling.

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USE OF TAPES OF STATEMENTS ON ISSUE OF FREE AND VOLUNTARY NATURE

During the trial of the motion of suppress the defendant objected to he court admitting the taped statements of Scott Collum in evidence for the limited purpose of their relevance on the issue of the free and voluntary way in which they were obtained. Such a practice has been recognized by the Louisiana Supreme Court. In the case of State v. Trudell, 350 So 2d 659 (1977) at page 662 and 663 of the Southern reporter

VOL. III

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 78-1715

DONNIE FRANKLIN COLLUM
AND
SCOTTY LYNN COLLUM

Petitioners

VERSUS

STATE OF LOUISIANA

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

GRISBAUM & KLEPPNER
FERDINAND J. KLEPPNER
Professional Building
3224 N. Turnbull Drive
Metairie, Louisiana 70002
ATTORNEY FOR PETITIONERS

appears the following:

> In addition, we have studied the transcripts of these two lengthy taped statements made three days apart beginning two days after the crime occured. Defendant Trudell was responding to a series of questions to which he gave coherent and responsive answers with only very minor inconsistencies. He indicated that he wanted to explain what happened to the authorities so as to exonerate his brother (who had been arrested for the crime). The transcripts reveal that Officer Reynolds who questioned defendant asked straightforward questions which did not lead the defendant toward particular inculpatory answers. In short, the statements themselves reveal that defendant was lucid, oriented as to time and place, and apparently in control of his faculties at that time. When we review, therefore, the state's unrebutted predicate testimony that the statements were made voluntarily, the sanity commission reports indicating that the statements show "no psychosis," and the lucid statements themselves, we conclude that the state did establish beyond a reasonable doubt that the statements were made voluntarily. Accordingly, we find no merit in defendant's assignment of error.

Clearly this objection is without merit.

(306) (307)

In re Creek, 243 A. 2d 49 (D.C. 1st Ct. App. 1968); State v. Lloyd, 212 N.W. 2d 671 (Minn. 1973); State v. Sinderson, 455 S.W. 2d 486 (MO. 1970); In re Rust, 278 N.Y.S. 2d 333 (Kings Cty, Fam. Ct. 1967) Leach v. State, 428 S.W. 2nd 817 (Tex. Civ. App. 1968); Forrest v. State, 76 Was. 2d 84, 455 P.2d 368 (1969).

The state has the burden of showing that a confession by a juvenile is freely and voluntarily given and not extracted by force, threats, coersisions, intimidations, or promises. Haley v. Ohio, 332 US 596, 68 S Ct 302, 92 L Ed 224 (1948). While ordinarily in civil procedures the burden is on the moving party to prove his case by a preponderance of the evidence, in juvenile proceedings, "no child shall be adjusted to be delinquent in the absence of proof beyond a reasonable doubt . ..". R.S. 13:1579.1. Accordingly it would appear that through the jurisprudence and statutory law that the same rules of evidence are applicable to determine the admissibility of a confession of a juvenile as are applicable to an adult in a criminal proceeding.

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ADMISSIBILITY OF 4:00 P.M. STATEMENT

A. Miranda Warning.

After Scott Collum was arrested and while in route from the trailer park to the sub-station, Detective Robert Woodrum

(305) (306)

RULES APPLICABLE TO DETERMINE ADMISSIBILITY OF CONFESSION OF A JUVENILE

Juvenile preceedings are conducted in accordance with the general rules of precedure used in civil cases. R.S. 13:1579. However, by consent of the parties, the admissibility of the statements of Scott Collum is being determined in advance of trial pursuant to a motion to suppress as authorized by Article 703 of the Code of Criminal Procedure. The rules of evidence prevailing in civil proceedings are applicable to a proceeding to determine if a child is delinquent. R.S. 13:1579.1. Generally speaking in order to admit a statement which qualifies as an admission or a declaration against interest in a civil proceeding it is not (306) necessary to lay the foundation of a Miranda warning or the free and voluntary nature of the statements as required by Article 703 of the Code of Criminal Procedure and R.S. 15:451. See Pugh, Louisiana Law of Evidence, Chapter 6, Paragraphs D and E at pages 435 through 446. However, in a juvenile proceeding, a child is entitled to the constitutional privilege against self-incrimination. R.S. 13Lk579; In re Gault, 387 US 1, 87 S Ct. 1428, 18L Ed 2d 527 (1967). Accordingly, it would appear that before the confession of a juvenile is admissible into evidence the state bears the burden of showing that the appropriate Miranda warning has been given. United States v. Fowler, 476 F. 2d 1091 (7th Cir, 1973); In re Teters, 264 Cal App 2d 816 70 Cal. Rptr. 749 (1968);

advised him of his Miranda rights from a card that he carried on his person. That card speciffically stated as follows:

> You have the absolute right to remain silent.
>
> Anything you say can and will be used as evidence against you in a court of law.
>
> You have the right to consult with an attorney, to be represented by an attorney, and to have an attorney present before and during questioning.
>
> If you cannot afford an attorney, one will be appointed by the court, free of charge, to represent you before and during questioning if you desire.

See pages 12, 13, 14, 27, 28, 46, 54, and 55 of the transcript. Detective Woodrum then asked Scott Collum if he understood these rights and read the waivers on the back side of the card. These waivers stated as follows:

> Do you understand the rights I just explained to you?
>
> With these rights in mind are you willing to talk to me about the charges against you?

Thereafter, Scott Collum indicated that he understood his rights and was willing to

talk to the officers about the charges. After arriving at the sub-station the officers commenced interviewing Donnie Collum first. After that interview was terminated they started an interview with Scott at approximately 4:00P.M. Scott was reminded of his Miranda rights and advised the officers that he understood them and consented to speak with them concerning the auto theft. After discussing the theft with Scott the officers advised him that they wished to speak to him about his father's death and again reminded him of his Miranda rights. Scott consented to speak with the officers about this subject. At approximately (308) 6:00P.M. the two police officers commenced taking a taped interview from Scott which was concluded at approximately 6:50 p.m. At no time during the course of the interview and the taking of the taped statement did Scott Collum request the presence of his mother or an attorney. See page 26, 48 and 49 of the transcript. The record and tape do not indicate that that fact that the statement was taken at a police station out of the presence of the defendant's mother in any way influenced or intimidated him into giving it. From all of the above it is the opinion of this court that the evidence shows beyond a reasonable doubt that Scott Collum was properly and adequately advised of his Miranda rights and knowingly and intelligently consented to discuss the car theft and the murders with the police officers.

B. Free and Voluntary Nature of Statement

The record shows that during the course of the 4:00 p.m. interview and tape statement that no promises were made to the defendant, no force was used, he was not threatened in any manner. See page 18, 19, and 48 of the transcript. During the course of the interview he was given water or coffee and cigarettes. See page 39 and 66 of the transcript. The court listened to the tape of the interview with Sergeant Sodaro and Detective Woodrum in chambers pursuant to the agreement of the parties and it indicated that the officers did not attempt to frighten him, initimidate him or promise him anything to get the statement. The tape indicated that the defendant was responding to a series of questions to which he gave coherent and responsive answers. The police officers asked straight forward questions which did not lead the defendant toward particular inculpartory answers. The tape reveals that the defendant was lucid, oriented as to time and place, and apparently in control of his faculties at the time the statement was given. The state has established the free and voluntary nature of the statement beyond a reasonable doubt as required by law.

(309)

For the above reasons it is the opinion of this court that the state has met its burden of proving the admissibility of the

during the interview did he request to have an attorney present or request that his mother be present. See page 93, 94, 96, 111, 128, and 128 of the transcript. During the interview Scott Collum appeared to be alert, appeared normal and was not under the influence of drugs or alcohol. See pages 91, 94, 128, and 129 of the transcript. Accordingly it it the opinion of this court that the evidence shows beyond a reasonable doubt that Scott Collum was properly given a Miranda warning and knowingly and intelligently consented to speak with the LaFourche Parish Deputies.

(310)

B. Free and Voluntary Nature of Statement

The record shows that during the course of the interview the defendant was not cuffed or shackled. He was not threatened, promised anything, coerced, intimidated, and his statement was freely and voluntarily given. See pages 96 and 128 of the transcript Pursuant to the agreement of the parties the court played the tape of the interview held with Detective Rodrique and Major Diaz in chambers. The tape indicated that Scott Collum was responding to a series of questions to which he gave coherent and responsive answers. The tape further showed that the police officers asked straight forward questions which did not lead the defendant toward particular inculpatory statements. The tape reveals that the

statement given by Scott Collum at 4:00 p.m. on June 3, 1977.

ADMISSIBILITY OF THE 12:55 A.M. STATEMENT

A. Miranda Warning

Prior to obtaining the statement from Scott Collum at 12:55 A.M. on June 4, 1977, Major Norman R. Diaz of the Lafourche Parish Sheriff's Office read the Miranda rights to him from a card that he had in his possession as follows:

1. You have a right to remain silent.

2. Anything you say can and will be used against you in a court of law.

3. You have the right to talk to a lawyer and to have him present with you while you are being questioned.

4. If you cannot afford to hire a lawyer one will be appointed to represent you before any questioning if you wish one.

Major Diaz then asked Scott if he understood these rights and he responded that he did. See pages 92, 93, 106, 107, 127, 128, 131, and 132 of the transcript. Major Diaz also reminded Scott of the rights given to him during the interview with the California authorities and he responded that he remembered them and understood them. At no time

defendant was lucid, oriented as to time and place, and apparently in control of his faculties at the time. Prior to giving his statement the defendant was allowed to visit his mother and she was consulted about the statement prior to giving it. The record and the tape do not indicate that the fact that the statement was taken at a police station out of the presence of the defendant's mother in any way influenced or intimidated him into giving it. Accordingly it is the opinion of this Court that the state has shown beyound a reasonable doubt that this statement was freely and voluntarily given.

For the above reasons it is the opinion of this court that the tape statment given by Scott Collum to Major Diaz and Detective Rodrigue at 12:55 A.M. on June 4, 1977, is admissible in these proceedings and was taken in accordance with the requirements of law.

ORAL INCULPATORY STATEMENTS

At the trial of the motion to suppress, evidence was taken concerning oral statements given by Scott Collum while going to Van Horne, Texas and in Van Horne, Texas. The admissibility of these statements will not be determined in this proceeding. Oral (311) pre-trial statements are not properly the subject of a motion to suppress pursuant to Article 703 of the Code of Criminal Procedure State v. Perkins, 337 So. 2d 1145 (1976); State v. Daniels, 262 La 475, 263

So 2d 859 (1972); State v. Hudson, 253 La 992, 221 So 2d 484 (1969).

For the above reasons the motion to suppress in this case is denied and judgment will be rendered accordingly.

Respectfully submitted,

/s/ Walter I. Lanier, Jr.
WALTER I. LANIER, JR.
JUDGE, 17th Judicial District Court
Parish of Lafourche
Division "A"

_C_E_R_T_I_F_I_C_A_T_E_

I certify that a copy of these reasons for judgment has been forwarded to Mr. John J. Erny, Jr., Assistant District Attorney, P. O. Box 9, Larose, Louisiana 70373, Mr. Jerome J. Barbera, III, Assistant District Attorney, 310 St. Philip Street, Thibodaux, Louisiana, 70354, and Mr. Christopher Smith, P.O.Box 479, Golden Meadow, Louisiana, 70357, sufficient postage annexed thereto.

Thibodaux, Louisiana, this 29th day of December, 1977.

/s/ Walter I. Lanier, Jr.
WALTER I. LANIER, JR.
JUDGE, 17th Judicial District Court

Parish of Lafourche
Division "A"

(312)

STATE OF LOUISIANA	JUVENILE COURT 17th JUDICIAL DISTRICT
IN THE INTEREST OF	
SCOTTY LYNN COLLUM	PARISH OF LAFOURCHE
SPECIAL JUVENILE NO. 1233	STATE OF LOUISIANA
	DIVISION "A"

****
JUDGMENT ON MOTION TO SUPPRESS
****

These matters came to be heard by the Court on a Motion to Suppress Evidence filed by the defendant and the Court after hearing the pleadings, the evidence, the law and the argument of counsel rendered the following judgment:

IT IS ORDERED, ADJUDGED, AND DECREED that the motion to suppress filed by the defendant, Scotty Lynn Collum, be and it is hereby overruled and dismissed.

JUDGMENT RENDERED, READ AND SIGNED this 29th day of December, 1977, in open Court at Thibodaux, Parish of Lafourche, State of Louisiana.

(312)

/s/ Walter I. Lanier, Jr.
WALTER I. LANIER, JR.
JUDGE, 17th Judicial District
Court
Parish of Lafourche
Division "A"

TRANSCRIPT OF PROCEEDINGS
STATE VS. DONNIE FRANKLIN COLLUM
VOLUME I

(11)

STATE OF LOUISIANA

VS. NO. 78839

DONNIE FRANKLIN COLLUM

STATE OF LOUISIANA

PARISH OF LAFOURCHE

17TH JUDICIAL DISTRICT COURT

MOTION TO SUPPRESS

TO THE HONORABLE THE JUDGES OF THE SEVENTEENTH JUDICIAL DISTRICT COURT SITTING IN AND FOR THE PARISH OF LAFOURCHE, STATE OF LOUISIANA:

On motion of Donnie Franklin Collum, through undersigned counsel and upon suggesting to this Honorable Court that the State has indicated that it intends to rely on a statement allegedly made by defendant in the prosecution of this matter; and,

UPON FURTHER SUGGESTING TO THIS HONORABLE COURT that any statement allegedly taken from defendant was done so in violation of his rights under the Constitutions and laws of the United States and the State of Louisiana, and should be suppressed; and,

UPON FURTHER SUGGESTING TO THIS HONORABLE COURT that the State of Louisiana should be ordered to show cause, if any it can, on a date and at a time to be determined by this Honorable Court why any statement or confession inculpatory or exculpatory, verbal or written, allegedly taken

from the defendant herein should not be suppressed and excluded from evidence in the prosecution of this cause.

O R D E R

Considering the foregoing motion and the allegations contained therein;

IT IS ORDERED that the State of Louisiana, through the District Attorney, show cause, if any it can, on the 2nd day of September, 1977, at 10:00 o'clock A.M., why any statement or confession, verbal or written should not be suppressed and excluded from evidence in he prosecution of this cause.

(40)

STATE OF LOUISIANA	17TH JUDICIAL DISTRICT COURT
VS. NOS. 78836, 78837, 78838 and 78839	PARISH OF LAFOURCHE STATE OF LOUISIANA DIVISION "A"

* *

JUDGMENT ON MOTION TO SUPPRESS

* *

These matters came to be heard by the Court on a Motion to Suppress Evidence filed by the defendant and the Court after hearing the pleadings, the evidence, the law and the argument of counsel, rendered the following judgment:

IT IS ORDERED, ADJUDGED, AND DECREED that the motion to suppress filed by the defendant, Donnie Franklin Collum be and it is hereby overruled and dismissed.

JUDGMENT RENDERED, READ AND SIGNED this 5th day of December, 1977, in open Court at Thibodaux, Parish of Lafourche, State of Louisiana.

/S/ WALTER I. LANIER, JR.
WALTER I. LANIER, JR.
JUDGE, 17th Judicial District Court
Parish of Lafourche
Division "A"

(41)

STATE OF LOUISIANA
PARISH OF LAFOURCHE

I HEREBY CERTIFY that the following, to-wit:

STATE OF LOUISIANA	)	CHARGE: INDICTMENT FOR
VS. NO. 78836	)	FIRST DEGREE
VS. NO. 78837	)	MURDER
VS. NO. 78838	)	CHARGE: INDICTMENT FOR
VS. NO. 78839	)	FIRST DEGREE
DONNIE FRANKLIN COLLUM	)	MURDER
		CHARGE: INDICTMENT FOR FIRST DEGREE MURDER
		CHARGE: INDICTMENT FOR FIRST DEGREE MURDER

ON MOTION OF THE STATE THE COURT ORDERED THAT NUMBER 78837 BE TRANSFERED TO DIVISION "B".

THE COURT FURTHER ORDERED THAT A PRE-TRIAL CONFERENCE BE HELD ON ALL FOUR MATTERS ON JANUARY 11, 1978 AT TEN O'CLOCK A.M. AT THE THIBODAUX COURT HOUSE IN THIBODAUX, LOUISIANA BEFORE DIVISION "B", WITH NOTICE ISSUE TO ALL PARTIES.

is a true and correct copy of the minutes of the 17th Judicial District Court in and for the Parish of Lafourche, Louisiana, dated December 5, 1977 INSOFAR as they relate to the matter entitled STATE OF

(41)

LOUISIANA VS. DONNIE FRANKLIN COLLUM NOS. 78836, 78837, 78838, 78839 of the Criminal Docket of said Court.

IN TESTIMONY WHEREOF,

Witness my hand and official seal, this 3rd day of March, A.D., 1978 at Thibodaux, Louisiana.

/S/ MARGARET RICHARD
Deputy Clerk of Court

(42)

STATE OF LOUISIANA	17TH JUDICIAL DISTRICT COURT
VS. NO. 78836, 78837, 78838, 78839	PARISH OF LAFOURCHE
DONNIE FRANKLIN COLLUM	STATE OF LOUISIANA

* *

PER CURIUM

* *

STATEMENT OF FACTS

On May 27, 1977, Jessie Collum, his second wife, Lenora, and their children, Anna and Jeffrey were killed in or near the Collum trailer in the Four Point Heights subdivision near the Raceland community in the Parish of Lafourche, State of Louisiana. All of these individuals had been shot several times, and Jessie Collum was stabbed twice. On May 29, 1977, Donnie Collum (age 15) and Scott Collum (age 14) the sons of Jessie Collum and his first wife, Mrs. Peggy Mendoza, were stopped by police authorities in Benson, Arizona in a 1974 Cadillac automobile belonging to Jessie Collum. The vehicle was left in Arizona and Scott and Donnie Collum were turned over to Mrs. Mendoza, and went to her home at the Red and White Trailer Park in Victorville, County of San Bernardino, California. On Wednesday, June 1, 1977, the bodies of the Collum family were discovered. Police authorities in Lafourche Parish determined at that time that the 1974 Cadillac

(42) (43)

and Donnie and Scott Collum, who had been living with their father, were missing. On the night of June 1, 1977, and the morning of June 2, 1977, the Lafourche Parish Sheriff's Office sent out nationwide bulletins for the location of the Cadillac automobile belonging to Jessie Collum. On June 2, 1977, at 10:18 A.M. Central time the Lafourche Parish Sheriff's Office sent a bulletin to the San Bernardino County Sheriff's Office requesting information concerning the 1974 Cadillac and the location of Don Franklin Collum. On June 3, 1977, the Lafourche Sheriff's Office received information from the San Bernardino County Sheriff's Office concerning the location of Donnie and Scott Collum. (43) At approximately 4:30 P.M. Central time (2:30 P.M. Pacific time) warrants were issued in Louisiana for the arrest of Donnie Collum and Scott Collum for theft of the 1974 Cadillac. This information was telephoned to the San Bernardino County Sheriff's Office and then Sergeant Charles J. Sodaro, Detective Robert J. Woodrum and Detective Dennis Searcy went to trailers nine and ten at the Red & White Trailer Park in Victorville, California, and apprehended Donnie and Scott Collum. They were advised that they were charged with auto theft, were handcuffed and placed in the Sheriff's unit. Their mother, Mrs. Peggy Mendoza, who was present on the premises, was advised that they were being taken into custody for Louisiana for auto theft and told that if she would come down to the Victorville

(43) (44)

Sheriff's Office Sub-station she would be given more details. In the Sheriff's vehicle while going from the trailer park to the sub-station, Detective Robert J. Woodrum read the Miranda warning to Donnie and Scott Collum from a Miranda card that he carried on his person and they individually advised him that they understood their rights. Neither of the two appeared to be under the influence of alcohol or any drug at this time. When they arrived at the sub-station the two were uncuffed and placed in separate interview rooms. At approximately 3:00 P.M. (Pacific time) Detective Woodrum and Sergeant Sodaro commenced an interview with Donnie Collum. He was reminded of his Miranda rights, which he acknowledged, and asked if he would speak to the officers concerning the theft of the car. He responded yes. He was then questioned concerning the possession of the Cadillac. He was thereafter again reminded of his Miranda rights and told that his father had been shot to death. At this time he became very nervous and denied any involvement in the death. The interview was thereafter terminated at approximately 3:30 P.M. At approximately 4:00 P.M. (44) Detective Woodrum and Sergeant Sodaro commenced an interview with Scott Collum. They reminded him of his Miranda rights and asked if he wished to talk with them. He consented to do so. After about ten minutes of questioning, Scott admitted his involvement in the deaths.

The officers then proceeded to question him concerning the details of the offenses. At approximately 6:00 P.M. the two police officers commenced taking a taped interview from Scott which was concluded at approximately 6:50 P.M. During the course of the interview with Scott Collum, Donnie Collum sent word to Sergeant Sodaro that he wished to speak with him but Sergeant Sodaro advised him that he could not do so at that time but would see him later. At approximately 8:00 P.M. Sergeant Sodaro and Detective Woodrum commenced a second interview with Donnie Collum. He was again reminded of his Miranda rights, indicated that he understood them and consented to talk with the officers. He first asked to know what Scott Collum had said and was told by the officers. He was allowed to hear a short portion of Scott's taped interview dealing with the actual killing of Jessie Collum. After hearing this, Donnie Collum indicated that Scott told it right down the line and at 8:11 P.M. he commenced giving a taped statement to the officers which was concluded at 8:40 P.M. At approximately 9:30 P.M. the officers met Mrs. Peggy Mendoza at the substation and advised her about the Collum deaths in Louisiana and that her sons had confessed to committing the murders. The officers then proceeded to a local airport to get Major Norman R. Diaz and Detective Dennis Rodrigue from the Lafourche Parish Sheriff's Office who were flying in that night. During the period

between 9:30 P.M. and midnight, Mrs. Mendoza was allowed to visit with her two sons. Major Diaz and Detective Rodrigue arrived in Victorville after 11:00 P.M. and en route from the airport were (45) briefed on the situation by Sergeant Sodaro and Detective Woodrum. Major Diaz then spoke to Mrs. Mendoza and received her permission to speak with Donnie and Scott. Major Diaz and Detective Rodrigue then proceeded to interview Scott Collum. He advised of his Miranda rights from a Miranda card and he said that he understood these rights. The officers commenced taking a taped statement from him at 12:55 A.M. on June 4, 1977, and this statement was concluded at 1:28 A.M. The officers then proceeded to interview Donnie Collum. Major Diaz read the Miranda rights to him from a card that he carried on his person and Donnie indicated that he understood these rights. A taped statement was commenced at 1:47 A.M. and concluded at 2:08A.M. On June 4, 1977, warrants of arrest for the murders of the Collum family were obtained from Judge Bernard L. Knobloch in Lafourche Parish. On that same date Donnie Collum and Scott Collum, in the presence of their mother, waived extradition proceedings before California Juvenile Court Judge John Ingro in San Bernardino County. On June 5, 1977, Major Diaz, Detective Rodrigue and Donnie and Scott Collum left California to return to Louisiana. On June 8, 1977, Donnie Franklin Collum was indicted by the

Lafourche Parish Grand Jury for the first degree murders of Jessie Collu, Lenora Collum,Anna Collum and Jeffry Collum. On June 27, 1977, this motion to suppress was filed by the defendant and this matter was heard on August 29 and 30, 1977. The Court ordered the transcript and memoranda from the parties and this case was thereafter taken under advisement.

JURISDICTION

The defendant urges that even though he is charged with a capital offense under Louisiana Law that nevertheless he is entitled to the protection of all substantive juvenile laws enacted for his protection, "such as prohibition of detention in a police station during investigation of the case." It is clear that the (46) juvenile court does not have jurisdiction over a person 15 years of age or older who is charged with a capital offense. Article 5, Section 15, Louisiana Constitution of 1974; R.S. 13:1570 A (5); State v. Whatley, 320 So 2d 123 (1975); State v. Dubois, 334 So 2d 4112 (1976). Even though a person under the age of 18 is classified as a minor (Article 37 of the Civil Code) or under 17 as a child (R.S. 13:1569 (3)), nevertheless, if that person is charged with a capital offense, he is subject to the jurisdiction of the criminal district court and not the juvenile court system. Accordingly, substantive juvenile court laws are not applicable to this case.

AUTHORITY OF MINOR TO CONSENT TO GIVE CONFESSION

The defendant further urges that since he was 15 years of age at the time that he gave his confessions that he could not legally waive his constitutional rights and consent to give a statement without the permission of his mother. This is clearly not the law of the State of Louisiana. In State vs. Hall, 350 So 2d 141 (1977), a case dealing with a 16 year old charged with armed robbery who was transferred from the juvenile court to the criminal district court for trial as an adult, the Louisiana Supreme Court at page 144 of the Southern Reporter observed as follows:

> La.R.S. 15:451 provides that, before a confession can be introduced into evidence, the state has the burden of affirmatively proving that it was free and voluntary and not made under the influence of fear, duress, intimidation, menaces, threats, inducements or promises. It must also be established that an accused who makes a confession during custodial interrogation was first advised of his Miranda rights. Miranda vs. Arizona, supra. While close scrutiny is required in determining whether the state has met its heavy burden of demonstrating that the confession of a juvenile was free and voluntary, we have held that

(46) (47)

the age of a defendant does not of itself render a confession involuntary. State vs. Ross, 343 So.2d 722 (La. 1977) State v. Sylvester 298 So.2d 807 (La. 1974).

(47) See also West v. United States, 399 F.2d 467 (5th Cir. 1968) cert. denied, 393 U.S. 1102, 89 S.Ct. 903, 21 L.Ed. 2d 795 (1969).

The record reflects that defendant in this case was fully informed of his Miranda rights on several occasions and that he signed a waiver of rights form. It additionally demonstrates that defendant was not threatened, abused, coerced or promised anything in return for his confession. Defendant presented no evidence to controvert the voluntary nature of his confession. After reviewing the record, we are convinced that the state satisfied its burden of affirmatively proving that defendant's confession was freely and voluntarily made after defendant had been fully advised of his Miranda rights. Accordingly, since there is no constitutional requirement of further "warnings," the trial judge did not err in denying defendant's motion to suppress and in admitting his confession in evidence. (Emphasis added)

(47)

Further in State v. Ross, 343 So 2d 722 (1977) a case dealing with a 16 year old charged with aggravated rape the Louisiana Supreme Court observed at page 725 of the Southern Reporter as follows:

Before a written confession can be introduced in evidence, the state has the burden of affirmatively proving that it was free and voluntary and not made under the influence of fear, duress, intimidation, menaces, inducements or promises. La.R.S. 15:451, La. Code Crim.P. art. 703(C). It must also be established that an accused who makes a confession during custodial interrogation was first advised of his Miranda rights. Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d (694) (1966). A confession need not be the spontaneous act of the accused and may be obtained by means of questions and answers. La. R.S. 15:453; State v. Simmons, 340 So.2d 1357 (La. 1976). While close scrutiny is required in determining whether the state has met its heavy burden of demonstrating that the confession of a juvenile was free and voluntary, we have held that the age of a defendant does not of itself render a confession involuntary. State v. Sylvester, 298 So.2d 807 (La. 1974). The voluntariness of the confession is a question of

fact. State v. Demourelle, 332 So. 2d 752 (La. 1976); State v. White, 321 So.2d 491 (La.1975).

It is well settled that admissibility of a confession is a question for the trial judge; its weight is for the jury. Conclusions of the trial judge on the credibility and weight of testimony relating to the voluntariness of a confession for the purpose of admissibility will not be overturned on appeal unless they are not supported by the evidence. State v. Hollingsworth, 337 So.2d 461 (La. 1976); State v. Sims, 310 So.2d 587 (La. 1975). (Emphasis added)

See also State v. Sylvester, 298 So 2d 807 (1974); West v. United States, 399 Fd 2d 457 (1968), Cert. Denied 393 US 1192, 89 S CT 903, 21 L Ed 2d 795 (1969); State v. Ghoram, 328 So 2d 91 (1976). The above authorities clearly demonstrate that a minor under 18 or a child under 17 can consent to give statements to police authorities and waive his constitutional rights without parental consent. Age is a factor in determining the admissibility of the confession but is not controlling.

OBTAINING CONFESSION OF MINOR AT POLICE STATION

The defendant alleges that the fact that the confessions were obtained from the defendant at a police station in view of his age of 15 and contrary to the law of California and Louisiana (R.S. 13:1577) renders them inadmissable. It is clear that the provisions of the cited Louisiana Statute apply only in situations subject to the jurisdiction of the juvenile court, and not to the situation where a 15 year old is charged with a capital offense. The Louisiana Supreme Court has rendered admissable confessions of persons under 17 who are tried as adults even though they have been given in police stations, police headquarters, or the district attorney's office. State v. Ross, supra; State v. Whatley, supra; State v. Sylvester, supra. The cases cited by the defendant of In Re Wesley, 285 So 2d 308 (4th Cir, 1973), In Re Garland, 160 So 2d 340 (4th Cir, 1964), and In Re White, 160 So 2d 344 (4th Cir, 1964) are not applicable to the facts of this case because they involve cases under the jurisdiction of the juvenile court. Further those cases have not always been followed in the juvenile courts. In Re Campbell, 344 So 2d 711 (2nd Cir, 1977) and In Re Melancon, 259 So 2d 609 (4th Cir, 1972); CF: In Re Holifield, 319 So 2d 471 (4th Cir, 1975).

MIRANDA WARNING FOR
8:00 PM STATEMENT

Before a confession can be introduced in evidence the state has the burden of affirmatively proving beyond a reasonable doubt that an accused in custody was first advised of his Miranda rights. Miranda v. Arizona, 384 US 436, 86 S Ct 1602, 16 L Ed 2d 694 (1966). It is clear from the record that after Donnie Collum (49) was arrested and placed in the Sheriff's vehicle that Detective Woodrum advised him of his Miranda rights from a card that he carried in his pocket. That card specifically stated as follows:

> You have the absolute right to remain silent.
> Anything you say can and will be used against you as evidence in court.
> You have the right to consult with an attorney, to be represented by an attorney, and to have an attorney present before and during questioning. If you cannot afford an attorney, one will be appointed by the Court free of charge to represent you before any questioning if you desire.

See pages 8 and 9 of the transcript. Before both his 3:00 P.M. and 8:00 P.M. interviews by Detective Woodrum and

Sergeant Sodaro he was reminded of these Miranda rights and on both occasions he indicated that he understood these rights and was willing to speak. Prior to the 8:00 P.M. interview, Donnie Collum had requested to have permission to speak to Sergeant Sodaro and wanted to make inquiries about what his brother Scott had told the officers. He did not at any time request that the questioning stop and at no time did he request to have an attorney present. The record further reflects that at no time did he request to have his mother present at the interview even though she was available either at home or at the police station. At the trial of the motion to suppress the defendant admitted that Detective Woodrum advised him of his Miranda rights and that he told Detective Woodrum that he understood them. He further admitted that before he was questioned he was reminded of these rights and that he said that he remembered them. See pages 312, 313, 331, 332, and 333 of the transcript.

FREE AND VOLUNTARY NATURE
OF 8:00 P.M. STATEMENT

R.S. 15:451 provides that before a confession can be introduced into evidence, the State has the burden of affirmatively proving beyond a reasonable doubt that it was free and voluntary and not made under the influence of fear, duress, intimidation, (50) menaces, threats, inducements, or promises. See

also R.S. 15:452 and C Cr P Art. 703(C). The record shows that Donnie Collum was a 15 year old person who had gone to the 9th grade and who had good proficiency in mathematics but poor proficiency in reading and writing. Under the facts of this case, the mere fact that the defendant was not particularly literate does not affect the free and voluntary nature of the statements given. State v. Neal, 321 So 2d 497 (1975); State v. Ross, 320 So 2d 177 (1975); and State v. Nicholas, 319 So 2d 365 (1975). He admitted at the trial of the motion to suppress that the police officers did not threaten him or promise anything to him and that they did not beat him. See page 318 of the transcript. A review of the testimony of the police officers shows that they did not attempt to frighten him, intimidate him, or promise him anything to get the statement. The court listened to the tape of the interview in chambers pursuant to the agreement of the parties and it indicated that the defendant was responding to a series of questions to which he gave coherent and responsive answers. The police officers asked straight forward questions which did not lead the defendant toward particular inculpatory answers. The tape reveals that the defendant was lucid, oriented as to time and place, and apparently in control of his faculties at that time. See State v. Trudell, 350 So 2d 658 (1977). The record further reflects that when Donnie

Collum became nervous at the first interview that the first interview was immediately terminated. The record further shows that he was fed between 5:30 and 6:00 P.M. prior to giving his 8:00P.M. statement. See pages 29, 62, 73, 78, and 79 of the transcript.

For the above reasons it is the opinion of this Court that the state has met its burden of proving the admissibility of the statement given by Donnie Collum at 8:00 P.M. on June 3, 1977.

(51)

MIRANDA WARNING ON THE 1:47 A.M. STATEMENT

With reference to the statement given by Donnie Collum to Major Norman R. Diaz and Detective Dennis Rodrigue at 1:47 A.M. on June 4, 1977, it appears that prior to taking the statement that Major Diaz spoke to Mrs. Peggy Mendoza, the defendant's mother, and asked if he could speak with Donnie and Scott. Mrs. Mendoza replied in the affirmative. Major Diaz asked her if she wished to be present during the interview and she indicated that she would wait in the waiting room. Mrs. Mendoza further suggested that the officers talk to Scott first because he would be more cooperative. See pages 139, 140, 163, 164, and 169 of the transcript. Major Diaz testified that during the interview Donnie Collum was in good

condition, and not handcuffed, appeared normal and had no emotional problems. Major Diaz read the Miranda rights to Donnie Collum from a card that he had in his possession as follows:

1. You have the right to remain silent.

2. Anything you say can and will be used against you in a court of law.

3. You have the right to talk to an attorney, to a lawyer, and have him present with you while you are being questioned. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning if you wish.

4. You can decide at any time to exercise these rights and not answer any questions and make any statements.

See page 166 of the transcript in particular, and pages 140, 165, 196, 200, and 201 in general. At the trial of the motion to suppress, Donnie Collum admitted that he told them that he understood those rights. See pages 325 and 340 of the transcript.

FREE AND VOLUNTARY NATURE OF THE 1:47 A.M. STATEMENT

The Louisiana Police Officers in their testimony clearly showed that no promises, threats, force, or intimidation were used to secure the statement from Donnie Collum. See pages 142, 169, 196, 206, 207, and 208 of the transcript. In his testimony at the trial, Donnie Collum admitted that the Louisiana Police Officers did not promise him anything or threaten or force him to give his statement. See pages 325, 340, and 341 of the transcript. Pursuant to the agreement of the parties the court in chambers played the tape of the interview held with Detective Rodrigue and Major Diaz at 1:47 A.M. on June 4, 1977. The tape indicated that Donnie Collum was responding to a series of questions to which he gave coherent and responsive answers. The tape further showed that the police officers asked straightforward questions which did not lead the defendant toward particular inculpatory statements. The statement itself reveals that the defendant was lucid, oriented as to time and place and apparently in control of his faculties at the time. State v. Trudell, supra.

For the above reasons it is the opinion of this Court that the taped statement given by Donnie Collum to Major Diaz and Detective Rodrigue at 1:47 A.M. on June 4, 1977, is admissible in these proceedings and was taken in accordance with the requirement of law.

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(53)

ORAL INCULPATORY STATEMENTS

At the trial of the motion to suppress, evidence was taken concerning oral statements given by Donnie Collum while going to Van Horne, Texas and in Van Horne, Texas. The admissibility of these statements will not be determined in this proceeding. Oral pre-trial statements are not properly the subject of a motion to suppress pursuant to Article 703 of the Code of Criminal Procedure State v. Perkins, 337 So 2d 1145 (1976); State v. Daniels, 262 La. 475, 263 So 2d 859 (1972); State v. Hudson, 253 La 992, 221 So 2d 484 (1969).

(53)

For the above reasons the motion to suppress in this case is denied and judgment will be rendered accordingly.

Respectfully submitted,

/S/ WALTER I. LANIER, JR.
WALTER I. LANIER, JR.
JUDGE, 17th Judicial District
Court
Parish of Lafourche
Division "A"

C E R T I F I C A T E

I certify that a copy of this per curium has been forwarded to Mr. John J. Erny, Jr., Assistant District Attorney,

(53)

P. O. Box 9, Larose, Louisiana, 70373, and Mr. Herbert O'Niell, Attorney at Law, Oil & Gas Building, 206 Green Street, Thibodaux, Louisiana, 70301, sufficient postage annexed thereto.

Thibodaux, Louisiana, this 13th day of December, 1977.

/S/ WALTER I. LANIER, JR.
WALTER I. LANIER, JR.
JUDGE, 17th Judicial District
Court
Parish of Lafourche
Division "A"

(10)

A. No, sir.

Q. Did they appear to be alert to you at this time?

A. Yes, sir.

Q. After advising them of their rights and reading the waiver to them, did you receive any responses from either of the two individuals?

A. Yes, sir.

Q. What did they tell you?

A. Well, I asked each one individually if they understood the rights, and each one individually said they did.

Q. And this was still in the automobile, correct?

A. Yes, sir.

Q. How long did it take to travel from the trailer park to the police station? To the Victorville Sub-Station, is it?

A. Yes, sir.

Q. How long was that?

A. Five minutes probably.

Q. After you arrived at the sub-station,

what's the first thing that you did, Detective Woodrum?

A. We brought both the juveniles into the sub-station and took them to a little interview room in the sub-station and seated both of them in the interview room and shut the door. Had an officer stand outside the door while Sergeant Sodaro and I went get our notebooks and prepared to interview them.

Q. Did you attempt to interview both of these individuals together?

A. No, sir.

(11)

Q. Who was the first individual that you interviewed?

A. Donnie Collum.

Q. And approximately what time did this interview begin?

A. Just about three P.M.

Q. And again, who was present with you at this time?

A. It was still myself and Sergeant Sodaro.

Q. Prior to your interrogation or your

interview, did you again speak to Donnie Collum with reference to his Miranda rights?

A. Yes. I did.

Q. And what exactly did you say to Mr. Collum?

A. I asked him if he recalled his constitutional rights that I had just advised him of a short time earlier, and he stated that he did.

Q. Did you ask him if he was willing to speak to you?

A. Yes, sir.

Q. And what was his response?

A. In the affirmative. Yes, he was.

Q. Did you then proceed to interrogate Donnie Collum?

A. Yes, sir.

Q. What was your interrogation concerned with at this time, Detective Woodrum?

A. How he became in possession of the Cadillac that we picked him up on. I explained to him at the start of it that we wanted to know how he

became in possession of the Cadillac and the circumstances surrounding his possession of the (12) Cadillac up until the time the Arizona authorities picked him up.

Q. At this time did you question him with reference to the death of his father or other members of the Collum family in Louisiana?

A. Not at that time, no, sir.

Q. Did you subsequently--

A. Yes, sir.

Q. -- during this interrogation discuss this with him?

A. Yes, sir.

Q. Prior to this, did you again advise him of any rights?

A. Yes.

Q. In what manner, Detective Woodrum?

A. When we finished talking about the car, I told him that there was something else that we wished to talk to him about. I asked if he still recalled the rights that I had explained to him earlier. He stated that he did. I told him that we

wished to talk to him in reference to some other information we had about the car. I asked him if he was still willing to talk to us, and he stated he was.

Q. Okay. Did you tell him what that information was?

A. At that -- when he said he would still talk to us, I did, yes, sir.

Q. What exactly did you tell him?

A. I think I first asked if he knew why his dad would file charges on him for taking the car, (13) and I think he said because he felt his dad wanted to get him in trouble. I think I then told him that his parents or his dad did not sign a stolen vehicle report, that his dad had been shot in Louisiana.

Q. Pardon? I'm sorry.

A. That his dad had been found shot in Louisiana.

Q. At this point in time what was Donnie Collum's reaction to that statement?

A. His immediate reaction to that statement, he became very nervous. His hands began to tremble, and he was emotionally upset at that time.

Q. Did you continue the interrogation?

A. Just briefly, and then we terminated it.

Q. At this time did Donnie Collum make any statements to you relative to is involvement in the death of his father, in the death of his father?

A. He denied any involvement in it, yes, sir.

MR. O'NIELL:

I'm sorry. I didn't hear the answer.

A. He denied any involvement in the death of his father.

BY MR. NAQUIN:

Q. What's the next thing you did, Detective Woodrum?

A. Well, the next thing is we then started an interview with his brother, Scotty Collum.

Q. With Scotty?

A. Yes, sir.

Q. Let me ask you this. Do you know how long that first interview with Donnie lasted?

A. Oh, I would say probably thirty minute, maybe forty minutes.

Q. At anytime did he request that you stop questioning him?

A. No, sir.

Q. At anytime did he request that an attorney be present?

A. No, sir.

Q. At anytime did he refuse to answer any questions?

A. No, sir.

Q. Do you know what approximate time your interview with Scotty Collum began?

A. It was approximately four o'clock.

Q. Did you follow the same procedure with Scotty Collum that you had followed with Donnie?

A. Yes. I did.

Q. Again, would you explain to the Court exactly what that procedure was as far as the advise of of rights and the questioning?

A. Yes, sir. When we contacted him again, I again identified ourselves

to him and explained a little bit why he was there, why we wished to talk to him. I then asked him if he recalled the rights that we had explained to him earlier when we picked him up, and he told us he did. I think I might have asked whether he wanted to hear it, but I don't recall. I asked if he was still willing to talk to us, and he said he was.

Q. Did you at that time question him with reference to the automobile?

A. Yes, sir.

(15)

Q. And he answered all of your questions?

A. Yes, sir.

Q. Did Scotty Collum ever request that you cease the interrogation?

A. No, sir.

Q. Did he ever request that an attorney be present?

A. No, sir.

Q. Did he ever refuse to answer any questions that you asked of him?

A. No, sir.

Q. Did you later on in the interrogation speak with Scotty Collum with reference to the death of his father?

A. Yes, sir.

Q. Prior to this interrogation did you again advise Scotty of his Miranda rights?

A. It was the same procedure that we used for Donnie. I just reminded him of his rights again, and I told him that we wished to talk to him in reference to some more information about the car, and I asked if he was still willing to discuss the case with us, and he stated he was.

Q. What was his initial reaction when you advised him of the death of his father?

A. Well, he indicated that was the first he heard that his father had been shot and he know nothing about it, but he showed no emotional reaction like Donnie did.

Q. How long, Detective Woodrum, did you question Scotty with reference to the death of his father?

A. Altogether it was probably over an

hour, maybe

(18)

Q. Okay. What did you reply, Detective Woodrum?

A. We told him that his brother had given us a statement implicating both Donnie and himself in the homicides.

Q. What was Donnie's reaction or what did Donnie have to say with reference to this?

A. He wanted to know what his brother said again and wanted to know if he could hear the tape. We told him that we had obtained a taped statement. He requested to hear the taped statement.

Q. Did you permit him to hear the tape?

A. No, sir. But we did permit him to hear a short portion of it.

Q. You played a short portion of Scotty's tape?

A. Yes, sir.

Q. Do you recall the portion that you played to him?

A. I don't recall the exact portion

personally, I don't.

Q. Did it in fact deal with the actual killing of Jessie Collum, his father?

A. Yes, sir.

Q. After Donnie listened to this particular portion of the tape, what did Donnie say to you, if anything?

A. As I recall, we only played probably thirty seconds of the tape, just enough that he could hear that we're not lying to him, and he said that Scotty told it right down the line.

Q. Is that the way he described it, Scotty told it right down the line?

(36)

A. We were requested to interrogate them in reference to the stolen vehicle and then interrogate them in reference to the homicides, yes, sir.

Q. When you brought them to the sub-station -- what is the sub-station?

A. It's one of several. We have about eight sub-stations in San Bernardino County. And the sub-station was located in Victorville. It covers the Victor Judicial District

(36)

which is approximately 22 hundred square miles.

Q. Is this a regular police station?

A. It's a regular sheriff's department, yes, sir.

Q. Were there any uniformed officers in the station when you brought them in there?

A. I'm sure there was, sir, yes.

Q. These boys were confined in cells at the time they were locked up in the station before interrogation?

A. No, sir.

Q. Wasn't Donnie removed to a cell and later brought back?

A. After we first spoke with Donnie, when we finished our first interview with Donnie, he was then I believe taken back for booking process.

Q. You spoke with his mother at the time that you made the arrest, is that correct?

A. Yes, sir. Briefly, I did.

Q. Did you tell her at that time what you were arresting them for?

(36) (37)

A. Yes, sir.

Q. What did you tell her?

(37)

A. I told her we were taking them into custody on the authority of the Louisiana authorities here for investigation of the auto theft charges.

Q. Did you tell her that they were suspects in a murder case?

A. I did not.

Q. Did you tell her that Jessie Collum, her former husband, was dead?

A. Not at that time, no, sir. We eventually told her that, yes.

Q. Did you ever tell her this prior to the time that you took statements from either Scott or Donnie Collum?

A. No, sir.

Q. Isn't it a fact that Mrs. Mendoza, the mother of these two boys, went to the station shortly after you got there?

A. I don't know how soon she arrived at the station, but I did meet with her at the station. It was sometime

later. In fact, it was probably a couple of hours later when she came down.

Q. But did she not go there shortly after? You did not see her until several hours later?

A. She may have arrived shortly after, but I did not see her, sir.

Q. You did not tell her to go home?

A. No, sir.

Q. How did she get to the station later? Didn't you go and pick her up or tell her to come back, that she could come back to the station?

A. I personally did not, no. I don't know how she

(42)

A. They were together for a period of time up until we started the interviews.

Q. At what time did you take these boys before a court or a juvenile officer or any other person connected with the juvenile process?

A. I personally did not take them before the --

Q. They were in your custody and actually under your control for at least seven hours, is that correct, or longer? How long -- after you brought Major Diaz back, how long did he interrogate them that night?

A. I would imagine it was probably about midnight when he started talking to them.

Q. How long did he talk to them?

A. I can't recall. I would say that he was probably -- he talked to both of them probably up until about two A.M. That's a guess, but somewhere around there.

Q. Did he take a statement at that time?

A. I believe he did, yes, sir.

Q. Had any attempt been made to comply with the California law to bring these boys before a magistrate?

A. We complied with all the California laws with reference to the arrest.

Q. Well, did you bring them before a magistrate at anytime between two o'clock or 2:25 in the afternoon and two o'clock the following morning?

A. No, we did not.

Q. Did you notify juvenile authorities that they were in your custody?

(47)

Q. Donnie was then -- you don't know what was happening to his mother during this time, do you, and her daughter?

A. No. They may have been at the office. I don't know.

Q. Is there any reason why they would not be permitted to talk to these boys prior to your questioning?

A. No. In California if the parent requests to be present during the interview with the juvenile, then they have to be present. If the juvenile requests his parents to be present, then we have to let the parent be present.

Q. Did you ask Mrs. Mendoza if she wished to be present?

A. I didn't, no, sir.

Q. But you understood the serious nature of the possible charge against this boy?

A. I understood that they were under

investigation for the homicides, yes.

Q. And you did not tell her what the investigation was for?

A. No. I told her the reason we were picking them up when we went out to the trailer home.

Q. Did you consider at anytime during these interviews that either of these boys should have an attorney?

A. I'm not sure I follow your question.

Q. Did you ever consider whether or not it would be advisable to their interests for them to have an attorney consult with them before they talked to you?

(71)

Donnie's mother and his sister, and we asked them if Donnie and Scotty were there, and she told us that they were next door at the other trailer.

Q. Did you proceed to the next trailer?

A. Yes, sir. We went to the trailer, made contact with the juveniles, identified ourselves, and placed them under arrest.

(71)

Q. Did you advise them at that time why they were being arrested?

A. Yes, sir. I believe we did.

Q. And what was that?

A. For investigation of grand theft auto.

Q. What is the first thing that you did after you arrested these individuals?

A. We handcuffed them and put them in the detective unit.

Q. Okay. While in the detective unit did you or anyone else in your presence advise these individuals of any of their Miranda rights?

A. Yes, sir. We did.

Q. Who specifically did this?

A. Detective Woodrum.

Q. Was this done in your presence?

A. Yes, sir. It was.

Q. Do you carry any type of card with the Miranda warnings?

A. Yes. All of the officers have cards that have been issued to them from

the district attorney's office.

Q. Was this card used in these warnings?

(81)

I think briefly as we left the office, because we were going down to the airport to meet Major Diaz and Detective Rodriguez. And that's what we did. We went down and picked them up from the airport.

Q. To your knowledge had the mother of Donnie and Scotty Collum ever requested to see her sons?

A. You're talking about before the interviews?

Q. That's correct.

A. I don't know. She may have.

Q. Did she request of you?

A. She may have, and if she did I would have told her that when we were through with the interview she could see them.

Q. Do you recall seeing her at the police station?

A. Yes. We told her to come down there and we would discuss the matter with her.

(81) (89)

Q. Did you see her prior to or after the interviews?

A. I believe it was after the interviews.

Q. Did either Donnie or Scotty request of either you or Detective Woodrum permission to see their mother?

A. No, sir. Not prior to the interviews, no sir.

Q. Not prior to the interviews?

A. No, sir.

Q. Okay. Sergeant Sodaro, how long have you been in law enforcement?

A. Oh, over ten years.

Q. And how long have you occupied the position as a sergeant?

A. About three years.

(89)

authority to arrest people from out of state, upon their request, is legal in California, and it is legal to make a felony arrest in California on verbal information received from another police officer.

(89)

Q. And this is the only probable cause you need to make an arrest?

A. Yes, sir.

Q. Is that somebody else says a crime might have been committed in Louisiana?

A. If he is a police officer and we feel that his information is valid, we have probable cause to make the arrest.

Q. You do not have a requirement that there must be a warrant outstanding for the person?

A. No, sir. I'm sure that if they don't pick up the prisoner within five days then they will be released from custody in California.

Q. When you talked to Mrs. Mendoza, the mother of these boys, what did you tell her that they were being arrested for?

A. At the time we made the arrest we told her for the theft of the auto.

Q. Did you inform her that you intended to interrogate them relative to murder?

A. No, sir. We did not.

(89) (118)

Q. But at that time you did intend to interrogate them as to the murders?

A. I believe we did, yes.

Q. Did you have any reason why you did not inform her of your intentions?

(118)

A. He wanted to talk to me.

Q. At what stage --

A. I don't really believe he interrupted. I think it was when I had went out in the hall for something. I'm not sure if it was to get a drink or to get Scotty a drink or what it was. And I was advised that Donnie wanted to see me.

Q. What did you tell him?

A. I believe I went back and talked to Donnie and told him that we were still busy with his brother and as soon as we were finished I would come back and get him and we would talk to him again.

Q. He never at that time asked you for a lawyer?

A. No, sir. He did not.

Q. He never asked to see his mother?

(118)

A. No, sir. He did not.

Q. He never asked to see his brother?

A. No, sir. He did not.

Q. And he never indicated to you what he wanted to talk about?

A. No, sir. He did not.

Q. What time was it that you brought Donnie down the second time?

A. I believe it was sometime around eight o'clock.

Q. He had been in custody either handcuffed or handcuffed to a chair or locked in a cell for approximately five and a half to six hours at this time, is that correct?

A. Somewhere around there, yes, sir.

Q. Tell me what happened when you brought him into that room.

curately and to shy away from questions that blatantly approached the crime. Using the history about his experience in Special Ed. and trying to coordinate that as closely as I could with my impressions at interview it was my impression that this young man was quite dull mentally and I roughly evaluated his mental age as seven to ten years, but I could at no time during the interview see or detect any real signs of mental illness and at one time during the interview when questioned about mental illness, he made the statement that he knew he was not mentally ill. To sum this up, my conclusions were that it was my impression that at the time of the alleged crime -- first, let me make this. My impression was that this young man was quite dull mentally with a mental age of seven to ten years, but he has no overt signs of mental illness. It was my impression at that time that at the time of the alleged crime that these conditions were similar to those at the time of the exam. However, that they could have been very forceably changed with the use of drugs, which could have happened in this instance. At present I feel that he is legally sane and within the confines of his limited I.Q. is able to assist his attorney in his own defense. He is also aware that he is charged with

four counts of Murder and could be sentenced to the electric chair.

Q. Doctor, did you find anything to indicate that any

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Q. Specifically, sometime around 2:30 in the afternoon would you state what occurred?

A. I was -- my daughter had rented the trailer next to ours, which was Space Nine. We lived in Space Ten. And I was over there sewing and making Debra a blouse. And Officer Sodaro and Officer Woodrum came to Deb's trailer, and he said, "Are you Mrs. Mendoza?" And I said, "Yes. I am." And he said, "Where is Donnie and Scotty?" And I said, "Well, they're over at the house, I guess." And they were. They were sitting in front of the house in some lawn chairs having a glass of tea. And Officer Sodaro, he showed me his badge at that time, and he walked around the corner there to the front -- to the side of our trailer. And he said, "Are you Donnie?" and "Are you Scotty?" to the boys. And they said, "Yes, sir. We are." And so he said, I'm arresting you for grand auto theft." And --

Q. Did he tell you what he intended to do before doing this?

A. No, sir. He didn't. And he made the boys stand up, and put his hands down the side, you know, to see if they had anything on them, I guess. And they put handcuffs on them and they took them.

Q. Did you have any conversation with them?

A. Any conversation with them?

Q. With the two officers.

A. Well, you know, you're kind of shook when they come and arrest your boys. And I asked them

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was a blond-headed man behind the desk also. And Officer Sodaro came out, and I said, "There's been no warrant on that car," you know, "Jessie hadn't signed a warrant or Lenore hadn't signed a warrant." And I said, "You'll have to release my boys." And he said, "Well, now we just want to talk to them, ask them some routine questions," and he said, "Go on back home." And he said, "Whenever we get through, he said, "I'll send somebody over to tell you so that you can come get

the boys." Okay. I went back home and I waited. And I kept calling in the meantime, and I must have called three or four or five times. And about -- it had to be approximately around 9:30 or ten. A policeman came back up there to the trailer, and he told me, "You can see your boys now." So I went back to the police station. And Officer Sodaro and Officer Woodrum met outside the sheriff's office, you know, where the boys were. And he told me, he said, "I've got some bad news for you." And see, at this time I didn't know any of this other -- I thought Jessie had been shot -- you know, my boys had been home a week nearly. And he said, "Your boys have confessed to four murders," and I went all to pieces. I mean I absolutely went all to pieces. And so he told me, he said that I could see them, you know. So I went in. Me and Debbie was together all this time. And I went in and I sat down --

Q. Who is Debbie?

A. Well, just where the handcuffs had been. He was -- his wrists were blue.

BY THE COURT:

Q. On both wrists?

A. On both wrists, yes, sir.

BY MR. O'NIELL:

Q. Were there any cuts on them or scratches?

A. No. I didn't notice any cuts or scratches.

Q. Mrs. Mendoza, when you first went to the sheriff's office at Victorville, did you ask to see the boys?

A. Yes, I sure did. That's what I was there for.

Q. You stated that you were told to go home. Do you remember exactly how you were told to go home?

A. He just told me, he said, "I realize there's no charges on the car." He said, "We're just holding them for --" how did he put that? Oh, he said, "Routine." He said, "Routine questioning." And I thought maybe they were going to ask them if they knew anything about, you know, people that might have been around or anything like that. I didn't know when it had happened, and I didn't associate it with the

boys at all at that time.

Q. Why didn't you wait until they finished --

A. What?

Q. Why didn't you wait until they finished their questioning to bring the boys home?

A. Because they wouldn't let me. They told me to go home and that they would send somebody out there and tell me when I could come back. And he told me that I could call, which I did, several times. But the man wouldn't give me any information because (249) it was up to Officer Sodaro, and he was in with the boys. And everytime I'd call he'd say, "He's not through questioning them yet," and, "Call back at such and such a time and you can talk to him."

Q. The first person that told you that this was routine questioning, who was that?

A. It was Officer Sodaro himself.

Q. You know Officer Sodaro?

A. Yes. I do.

Q. You saw him in this courtroom

yesterday?

A. Yes. I did.

Q. You were not permitted to go back there until after these statements had been made, is that correct?

A. That's right.

Q. Now, am I correct that you were at the police station on your second visit that night when Major Diaz and Officer Rodrigue arrived?

A. Yes, sir. I waited for them.

Q. Now, at that time did they tell you that they were going to take a statement from these boys?

A. No, sir. They did not.

Q. What did they tell you? What did you understand them to say?

A. Well, we went in this little office thing, and he wrote down -- I've still got the slip of paper. He wrote down his name, his address and his phone number. And he told me your name, that you would be appointed as public defender. Your name's on it in his handwriting right in my purse

(276)

BY MR. O'NIELL:

Q. Just what you know. Not what anybody told you.

A. Okay. And so we left, and we went up to the police department, and mother asked the lady there that was working at the desk --

Q. Were you present at the time she asked this?

A. Yes, sir. I was.

Q. All right.

A. And she asked if she could talk to someone that was over the Collum boys that had been just brought in. And the lady called Sodaro, she said that we would have to wait a few minutes for him to come out front. And so we sat down and we waited a few minutes, and he came out and he said that they were questioning the boys. And mother said, "Well, what are they being held on," because she had called Louisiana and there wasn't no charges, nobody had put charges on the car. And he didn't say anything, and he said that they were still questioning the boys, that she would have to come back later after they had finished questioning them. And so we kept calling. We called about

(276) (312)

three times, and he was still questioning them. And so about 9:30 or ten an officer came to the house and said that we could go up there and talk to the boys, and he said if they could have got the boys sooner maybe they could have saved four lives. And so we got our purses and we went up there, and we had to wait, you know, a few minutes. And Sodaro and Woodrum came out as we were getting out of the car and said -- told my mother that

(312)

A. Yes, sir.

Q. Approximately what time?

A. It was 2:30.

Q. Would you tell the Judge in your own words exactly what transpired from that time up to the time of the -- up to the time that you were taken from the booking room and put in the cell?

A. Well, I didn't get put in the booking room --

Q. Not in the booking room. The interrogation room at the jail. Go ahead.

A. Well, me and Scotty was sitting out in front of the house drinking tea and listening to the radio, waiting for his girlfriend to get out of school. And a whole bunch of policemen come up there to the house and they asked us if we was Donnie and Scotty Collum.

Q. How many policemen were there?

A. Well, I seen a whole bunch of them, but the ones that handcuffed us and stuff was Sergeant Sodaro and Detective ---

Q. Go ahead and tell the Judge.

A. Well, they read us our rights, they handcuffed us in the rear, and they took us and put us in the car. And on the way down we talked about weather and stuff like that, small talk.

Q. Let me ask you something. When did they read you your rights?

A. Well, they read them when they put the cuffs on, but -- yes, I think they did read them when they put the cuffs on. I ain't for sure.

Q. Did they read them to you after that, on the way to the station?

A. Yes. Driving to the station.

Q. Who read them do you?

A. No. He didn't say -- I don't believe, but I ain't for positive, that he didn't say them before we got in the car and starting driving.

Q. When did he say them?

A. When we were driving down to the station. He started when we was parked there and backed out, and by the time we got done backing out he had done it.

Q. It was in the car?

A. Yes.

Q. When you were backing out?

A. (The witness nodded affirmatively.)

Q. Well, was it when you were handcuffed or not?

A. Yes, but I ain't for sure if he read them to me or not before that time.

Q. Well, did he read them to you at the time he handcuffed you?

A. I really don't remember.

Q. But you do remember him reading them to you as you were backing out?

A. Yes.

Q. Who read them?

A. The guy that was driving.

Q. Who was driving?

A. I thought that it was Sergeant Sodaro, but I guess I wasn't for sure.

Q. You're not certain?

A. No.

Q. Okay, well, go on. Tell the Judge what happened.

A. Well, when we got down to the station they put me (314) and my brother in the room, and they separated us after around fifteen minutes.

Q. All right. Now, when they put you in that room, what did they do?

A. They took one of the handcuffs off and put it on the chair.

Q. Going down to the station, how were you handcuffed, front or back?

A. Back.

Q. When you got to the station they took one off?

A. Yes.

Q. Were these handcuffs tight on you?

A. Yes. They were supertight.

Q. Did you ask anything about them?

A. I asked Sergeant Sodaro to loosen one, the one that wasn't handcuffed to the chair, and he did.

Q. But they weren't loosened before that?

A. No.

Q. But you didn't complain before them?

A. No.

Q. When you did complain he did loosen them?

A. Yes, sir.

Q. All right. Proceed.

A. Well, we got in there, they separated us after around fifteen minutes, then they come in, they started

(314)
questioning me.

Q. Go on.

A. It was mostly about the car charges, you know, how we become possession in the car, of the car. And then they started asking us questions, if we had a firearm and all of this about the firearm, and then
(315) they told us that they were shot, you know, they told me.

Q. That who was shot?

A. That Jess was, my dad. And I said I didn't know nothing about it, and they asked me a couple more questions, and then I said I wanted to see an attorney, and he said, "Okay. Let me ask you a couple more questions."

Q. Now, what questions did he ask you after that?

A. Around four, five maybe.

Q. What kind of questions?

A. My name, stuff like that. But I ain't for sure. I think it's about my name and how old I was and stuff like that.

Q. Nothing to do with the murders?

VOL. IV

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 78-1715

DONNIE FRANKLIN COLLUM
AND
SCOTTY LYNN COLLUM

Petitioners

VERSUS

STATE OF LOUISIANA

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

GRISBAUM & KLEPPNER
FERDINAND J. KLEPPNER
Professional Building
3224 N. Turnbull Drive
Metairie, Louisiana 70002
ATTORNEY FOR PETITIONERS

(315)

A. May have. I can't say - -

Q. Are you sure that you asked for an attorney?

A. I'm positive I asked for an attorney, because they said, "Okay," and that's why they stopped questioning me.

Q. After you asked for an attorney, did they ask any more questions directed to getting you to make a confession at that time?

A. You mean about the murders?

Q. Yes.

A. I couldn't say for sure.

Q. What did they do then?

A. Then they took me back and they put me in a cell.

Q. Now, what did you think was going to happen while you were in that cell, what were you waiting for?

A. Well, I knew they was going to question Scotty because they told me that.

Q. Because what?

A. They told me they was going to talk to Scotty, you know, and so I knew they was talking to Scotty.

Q. How long were you in that cell?

A. I would say around two hours, but I ain't for positive.

Q. Now, while you were in that cell did you talk to anybody else?

A. Just the jailer when he come by.

Q. What did you all talk about?

A. What he thought I would get, how much time.

Q. What did he tell you?

A. He told me that I would probably get three years at the most.

Q. Did you believe him?

A. Yes.

Q. Okay. Now, why was he talking to you?

A. He come back there for some reason. I think it was to clean out another cell.

Q. Did he tell you you ought to give a confession?

A. No.

Q. But he acted like you were guilty?

A. Yes.

Q. And you thought he knew what he was talking about?

A. Yes.

Q. Okay. Did you send for Sodaro?

A. Yes. I asked if I could see him.

Q. What did you send for him for?

A. To talk to him, find out what Scotty said, and if I could see Scotty.

Q. Did you want to make a confession at that time or (317) make a statement?

A. No.

Q. You only wanted to see Scotty?

A. Yes, and find out what Scotty -- what was happening with Scotty.

Q. How close are you and Scotty?

A. Well, I would say we're close, probably about as close as two brothers could get.

Q. And who came to get you?

A. I believe it was Sergeant Sodaro.

Q. Are you sure it was him or not?

A. Well, I talked to another jailer, you know. I asked if I could see him, you know, and he said, "He's busy right now."

Q. How long did you have to wait?

A. I would say I waited around ten, something like that, minutes, and then Sergeant Sodaro come back there and told me he was busy.

Q. He came back and told you he was busy?

A. Yes.

Q. Did he tell you what he was busy doing?

A. Yes. He told me he was talking to Scotty.

Q. Okay. And how long was it after that before he took you out?

A. Around another thirty minutes. I couldn't say for sure.

Q. Now, when they brought you down, what happened when they brought you back into the booking room?

A. They told me that Scotty said everything, told them everything, and then they played me some of that tape.

Q. All right. I want to ask you something. Did you again ask for a lawyer?

A. No. They told me they was going to get me one.

Q. You didn't ask because you were waiting for a lawyer?

A. Well, it was late. I figured, you know, that I would be seeing him tomorrow.

Q. Be seeing who, the lawyer, the next day?

A. Yes. They said they was going to get me one, said, "Okay."

Q. Did you know that you had the right to that lawyer before you talked?

A. No.

Q. You didn't understand that?

A. No.

Q. So they told you that Scotty had talked to them?

A. Yes.

Q. And they let you hear part of the tape?

A. Yes.

Q. How much of that tape did you hear, how long?

A. Around three or four minutes.

Q. Now, after that you gave them a statement?

A. Yes, sir.

Q. Did you give it to them voluntarily? Did they beat you to get it?

A. No.

Q. Did they promise you anything?

A. No.

Q. Did they threaten you with anything?

A. No.

Q. Did you believe that there would be anything wrong (319) in giving them that statement?

A. No.

Q. Did you think that anything could happen to you if you gave it to them?

A. Like the guy told me, I probably would get off with parole or something like that, three years at the most, so that's what I figured.

Q. That's what you thought it would be?

A. Yes, sir.

Q. And you didn't realize that you had a right to that attorney before you gave that statement?

A. No. Like, they said they was going to get me one, and they're the policemen. I figured they'd know what they were doing.

Q. Did you realize that you didn't have to talk to them?

A. No. I didn't realize that.

Q. But they told you you didn't, didn't they? They told you you didn't have to talk to them, didn't they?

(319) (320)

A. Yes. Not in so many words, but they did, I suppose.

Q. When they gave you the Miranda warning, did you hear what they said?

A. Yes.

Q. What does the Miranda warning say?

A. I ain't for sure. You want me to tell you what I know of it?

Q. Yes.

A. You have the right to remain silent. You have the right to an attorney.

Q. Did you understand what the right to remain silent meant?

(320)

A. No. Not actually. I didn't realize if they was talking to me I didn't have to answer no questions if I didn't want to.

Q. You thought if they asked you a question you still had to answer them?

A. Yes.

Q. What about this lawyer? Did you feel that this statement meant

(320)

anything without a lawyer?

A. I didn't know nothing about that. I mean, they said they was going to give me. That's all I knew.

Q. Didn't they tell you that you had a right to have an attorney present when you were speaking or before you spoke?

A. Yes, I believe so.

Q. Were you waiting for that attorney?

A. Well, they said they was going to give me one, you know. Yes, I was figuring they was going to come see me.

Q. At the time that you gave this statement did you realize that everything you said could be used against you in Court?

A. No.

Q. Did you think that this was a confession that could be used in Court against you?

A. I didn't know it would be used against me in Court, no. But I --

Q. Hadn't they told you that at the time of the Miranda warning?

A. Yes.

Q. Did you hear them say that, that anything you say can and will be used against you, do you remember that?

(321)

A. Anything I can and say will - -

Q. Anything you say can and will be used against you. Do you remember them saying that to you?

A. Not to my knowledge. They may have, but not to my knowledge.

Q. You don't remember that from the Miranda warning? Stop and think. Did Mr. Woodrum tell you that you have an absolute right to remain silent? Do you remember him saying that when he was reading that card?

A. If he read the card, it must have said that.

Q. Well, no. We know it said that. But what I want to know is whether you remember him saying that or reading that off of the card?

A. He said I had the right to remain silent, yes.

Q. And the next thing he told you was that anything you say can and will be used against you?

A. I didn't hear him -- I may have heard him, but I don't remember saying that.

Q. And then he said that you have a right to have an attorney present at all times?

A. He said I have a right to an attorney, yes.

Q. And he said, "If you do not have money to employ a lawyer, one will be appointed to represent you." Do you remember him saying that?

A. Yes.

Q. Now, before these officers questioned you the second time in there, didn't they remind you again that they had read the Miranda warning to you?

A. Yes.

Q. But they didn't read it again?

(322)

A. No.

Q. You're sure they didn't read it to you again?

A. I don't remember them.

Q. It's possible they did read it to you again?

A. It's possible.

Q. But you don't remember them doing it?

A. No.

Q. How many times do you remember them reading that warning or saying that warning to you?

A. Only the time when I was arrested and the time when the Louisiana officers come down.

Q. But did they tell you several times that they remind you of it, that they had read it to you?

A. Yes.

Q. And they asked you if you understood it?

A. Yes.

Q. And all the time you told them yes?

A. Well, I thought I did.

Q. Do you understand now what it means, today?

A. Yes, pretty much so. I would probably say yes.

Q. You didn't believe that this statement you were giving is one that would be used against you?

A. I didn't know that, no. They didn't tell me it was.

Q. But you figured if you did tell them something you might be convicted, though, didn't you?

A. Well, like the guy said, you know, I would get three years at the most. I figured three years at the most.

Q. Did this influence your giving that statement?

A. Well, three years at the most, you know. He said, (323) "You'll probably get off on parole or something like that."

Q. At the time you got here to Louisiana did you think you were in trouble?

A. Not until after I talked to you that day after I come here and

and pleaded.

Q. After you talked to me you realized you were?

A. Yes.

Q. But until then you didn't realize that you were in serious trouble?

A. Not really, no.

Q. Why didn't you realize you were in serious trouble?

A. Because the man said, you know -- I figured he knew a lot more about it than I did.

Q. Were you relying on that when you made that statement?

A. Well, yes, I guess you could say that.

Q. If that policeman hadn't talked to you or that jailer hadn't talked to you, would you have given the same statement?

A. I couldn't say that for sure.

Q. You don't know whether you would or not?

A. I couldn't say, no.

Q. Do you feel that he influenced your giving that statement?

A. Yes. Made me feel a lot better knowing three years at the most, you know, he said if I'd say that. He said if they found me guilty that's what I'd get, three years at the most.

Q. What time did you eat on this day?

A. Around 5:30, six o'clock that evening.

(324)

Q. Had you eaten anything during the day?

A. No.

Q. Had you eaten lunch?

A. No.

Q. Did you ask for anything to eat?

A. No.

Q. Were you hungry?

A. Yes.

Q. But you never asked anybody?

A. No.

(324)

Q. Why?

A. They were busy questioning me, and I was wondering about Scotty and what all was going on.

Q. Were you concerned about Scotty during this whole thing?

A. Yes.

Q. Did they play your tape back to you after they had taken the statement?

A. Yes.

Q. And after that, what did they do, let you out?

A. Can you say that again?

Q. After they finished taking this statement, what did they do?

A. They -- I believe they took me back to the cell.

Q. Now, what time was it when you got back to that cell, or do you know?

A. I wouldn't know, but I would say roughly around eight o'clock.

Q. Now, do you remember when the Louisiana officers talked to you?

(324) (325)

A. Yes.

(325)

Q. Did you ask them for a lawyer?

A. No.

Q. Why didn't you?

A. Those guys, Officer Darrow and Lieutenant whatever his name is, they told me they was going to get me a lawyer.

Q. That was the first time you asked?

A. Yes.

Q. You didn't think it was necessary to ask again?

A. No. They said okay.

Q. The Louisiana officers, Major Diaz and Deputy Rodrigue, do you remember them?

A. Yes.

Q. Did they threaten you in any way?

A. No.

Q. Did they promise you anything?

A. No.

Q. Did they use any force on you --

A. No.

Q. -- or hurt you in any way?

A. No.

Q. Did they read your Miranda rights to you?

A. Yes. They did.

Q. Do you remember what they told you on the Miranda card? Did they read them off, or did they say them, or do you remember?

A. I don't remember.

Q. But they did give you your Miranda rights, you distinctly remember that?

A. Yes.

Q. Do you remember what the Miranda rights were?

A. They said just about the same thing that California said.

Q. Did you understand what it meant?

A. I thought I did. If I would have

known today then, you know, it would have been different.

Q. You think you understand them now?

A. I couldn't say for positive, but I think I do.

Q. You gave the Louisiana lawyers -- I mean, the Louisiana officers -- a statement too, is that correct?

A. Yes.

Q. The same statement approximately that you had given the other officers?

A. Yes.

Q. Now, I will ask you this. Did you give that to them voluntarily?

A. What do you mean, voluntarily?

Q. Well, did you want to give it to them? Did you feel that you had to give it to them?

A. Yes.

Q. Why?

A. Because they asked me, and I didn't know better. If they said -- they didn't say I didn't have to, you know.

(326) (327)

Q. Well, on the Miranda warning they told you you had the right to remain silent?

A. Yes. But I didn't understand that. I mean --

Q. Didn't you understand that the right to remain silent meant the same thing as not giving a statement?

A. No. Well, I don't believe. I don't believe I would have.

(327)

Q. What did you understand by the right to remain silent?

A. Well, I didn't really thing about it, you know.

Q. You didn't really know what the devil it did mean, did you?

A. To tell you the truth, no.

Q. Did anybody explain to you what the Miranda warning meant, did they explain to you what the right to remain silent meant, that it meant you didn't have to give a statement, that you didn't have to say anything, anybody ever tell you you don't have to give a statement?

(327)

A. No. They never told me I didn't have to --

Q. Did anybody tell you you didn't have to answer questions?

A. No.

Q. Did anybody explain to you that the terms "what you say can and will be used against you" meant that this would be evidence against you in Court to convict you?

A. They didn't tell me that they was even going to use the Court, what we said or nothing. The only thing they explained to me was the lawyer.

Q. How did they explain the lawyer?

A. They said that I did have the right to a lawyer.

Q. You understand that?

A. Yes.

Q. That you didn't have to pay for that lawyer?

A. Yes. They said that one would be appointed for me.

Q. Did you understand that you had the right to have that lawyer before you

answered any questions? Did
(328) they explain that to you?

A. Not in that term right there, no.

Q. When these people asked you questions, you felt you had to answer them?

A. Yes, sir.

MR. O'NIELL:

Tender the witness.

CROSS EXAMINATION

BY MR. NAQUIN:

Q. Donnie, when will you be sixteen?

A. I was sixteen August 2nd of this month.

Q. So you're sixteen right now, correct?

A. Yes, sir.

Q. Before you took this witness stand certain rights were explained to you, like the right against self-incimination where you don't have to testify if you don't want to. Did you understand those rights?

A. I believe pretty much so, yes.

Q. Did you know what the term "self-incrimination" meant?

A. In other words, it would hurt me or something like that? Were to hurt me in the process or something? Is that explaining it?

Q. That's testifying against yourself. You don't have to do that. You don't have to testify if you don't want to.

A. Yes.

Q. You understood that?

A. I understand it, yes.

Q. Donnie, how far did you go in school?

(329)

A. You mean the grade I'm in now?

Q. Correct.

A. The ninth grade.

Q. Ninth grade. You've never failed any grade, have you?

A. I would not say failed. I've been put back because I didn't go to kindergarten.

(329)

Q. Well, you started a year late, right?

A. You could say that, yes.

Q. Okay. But from kindergarten through the ninth grade you've never failed any grades, have you?

A. No, sir.

Q. Can you read, Donnie?

A. Since I've come to jail, yes. I've taught myself how to read.

Q. You've taught yourself how to read?

A. Yes, from what little I knew, you know.

Q. Can you read a newspaper?

A. I can't read the big words in it, but I can read the little ones.

Q. Can you write?

A. You mean cursive or printing?

Q. Cursive.

A. I can use, like, some letters and I can't use others. Say, I could write an "A" but not a "B". I don't know how to write a "B" or

something like that.

Q. So when you want to write something you're required to print it?

A. Oh, yes. I've always printed.

Q. Donnie, were you in special education classes or were you in regular classes?

(330)

A. I was in special education classes most of the time.

Q. Where did you attend school, do you remember?

A. You mean from -- from when? When I started school or --

Q. Well, did you attend many schools?

A. Yes, sir. A lot of them.

Q. Did you ever attend school in California?

A. Yes, sir.

Q. What's the last school you attended?

A. The absolute last school?

Q. That's correct.

A. Well, you mean that I went to or that I went enrolled and never went back?

Q. Well, the last one that you went to, that you attended. Not the one that you enrolled and didn't go back.

A. I would say it was in Ashfork, Arizona.

Q. What was that word?

A. Askfork, Arizona.

Q. Do you know how to spell that?

A. A-s-k- I guess you would spell it just like a regular fork.

Q. I think you testified that you admitted the taking of the car without permission, is that correct?

A. Yes. We told them we took it without nobody knowing about it.

Q. Okay. And this was in Benson, Arizona?

A. Yes, sir.

Q. Now, your mother picked you up in Benson on a Sunday, is that correct?

A. I couldn't say for sure. I don't know the day.

Q. Well, if she picked you up on a Sunday and you were at the trailer until Friday when you were arrested, right? That was on a Friday?

A. Well, it took the time from getting back from Benson to California. I would say we got to California probably -- if it was Sunday, we would have probably got there around Monday some time.

Q. All right. Did you tell your mother that you had taken the car without permission?

A. Without his knowledge, yes.

Q. Without his knowledge. You were arrested at the trailer at approximately 2:30 in the afternoon?

A. Yes, sir.

Q. Now, you said you don't recall but that -- how many times did they read you your rights at this time?

A. At the time they arrested us?

Q. That's right.

A. To tell you the truth, I don't

remember if they read them when they handcuffed us. I don't remember if they did that time. But I know they read them when we was in the car.

Q. Did they tell you why you were under arrest?

A. They said for grand theft auto. That's the term they used.

Q. Was it Detective Woodrum who told you your rights?

A. In the car, yes.

Q. It was?

A. But when they handcuffed us, I don't even remember if they read them.

Q. Okay. But you do know it was Detective Woodrum in the car who gave you your rights?

A. Well, whoever was driving.

Q. And then you were brought to the station, and you and Donnie were kept together for approximately fifteen minutes?

A. You mean Scotty?

Q. I mean Scotty. I'm sorry.

A. Approximately fifteen minutes, yes.

Q. I think you testified that you complained that your cuffs were a little tight and Sergeant Sodaro loosened them?

A. I didn't complain. I asked him if he would loosen them, that they was cutting off my circulation.

Q. And he did loosen them?

A. Yes, sir. He did. Well, the one that wasn't handcuffes to the chair.

Q. So you had -- when he loosened them, they were loose enough to where they weren't bothering you anymore?

A. Yes. I could move a little better.

Q. Then Sergeant Sodaro and Officer Woodrum spoke to you individually, is that right?

A. Yes. They split us up.

Q. Now, before they talked to you, they reminded you of your rights?

A. Yes. They said, "Do you remember the rights we read you?"

Q. And what did you answer?

A. I said, "Yes."

Q. Now, isn't it a fact that the first time they read (333) you those rights in the car didn't they ask you if you understood those rights?

A. Yes, sir. They did.

Q. And what did you say?

A. I said, "Yes."

Q. Okay. So they again reminded you of those rights or that they had given you rights --

A. Yes.

Q. -- asked if you recalled them?

A. They said, "Do you remember the rights we read to you?" or something like that. I don't know the words.

Q. And you said, "Yes. I do"?

A. Yes.

Q. Okay. Did they ask you then if you wanted to answer their questions?

A. No. They just started asking questions.

Q. And they questioned you about the car?

A. Yes, sir.

Q. Now, before they questioned you about the gun, isn't it a fact that they again reminded you or asked you if you remembered the rights which they had given you?

A. Would you say that again?

Q. All right. Number one, they read you your rights in the car, that's correct?

A. Yes.

Q. They reminded you of those rights before they questioned you about the car?

A. Yes. I believe.

Q. Now, before they questioned you about the gun, (334) didn't they remind you of those rights again?

A. I couldn't say. I don't remember. They may have and they may not have. I don't know.

Q. How did they question you about the gun?

A. They asked us if we had one and if we ever had one, stuff like that.

(334)

Q. Okay. And --

A. They asked us if we ever shot a gun or something like that or went hunting.

Q. And you answered their questions?

A. Yes.

Q. When they asked you about the gun, Donnie, didn't you become very upset?

A. Oh, I wouldn't say at that time, no.

Q. Did they tell you at that time that Jessie had been shot?

A. Yes.

Q. Did you become upset then?

A. Yes.

Q. Did you become very excited and very nervous?

A. What you mean "excited"?

Q. I think you know. Were you shaking?

A. Well, yes. I got real bad nerves.

Q. Was your voice breaking or quivering?

(334) (335)

A. I don't remember. It may have. It may not have.

Q. Isn't it a fact that that's why they stopped questioning you at this time?

A. No. It ain't. I asked for an attorney, and they said, "Okay." You know, they said, "We're going to get you one." Not those words. They said, "Okay," or "All right," I believe it was. And (335) then they asked me a couple more questions.

Q. In what manner did you ask for an attorney?

A. I said, "If you're going to be asking me those kind of questions," I said, "I would like to see an attorney. I want a lawyer."

Q. Well, did you -- you knew you had a right to a lawyer, huh?

A. Yes. They told me that if I wanted one that they would give it to me.

Q. So then you must have understood the rights that they had given you, if you knew that?

A. No. They said, "Anytime you would like a lawyer, request it." I remember Sergeant Sodaro saying

that. I believe it was Sergeant Sodaro saying that.

Q. So you went back to the cell then for about two hours?

A. I would say around two hours, yes.

Q. This is supposedly when this conversation took place with the jailer, right?

A. Yes. When he -- I believe he brought in the food. I don't know if it was at that time or the time when he was cleaning out the other cell. I ain't for sure.

Q. Who was the jailer, Donnie?

A. I don't know his name. I don't remember.

Q. He didn't have a name tag?

A. I don't believe. I didn't see one.

Q. Was he uniformed?

A. Not in no blue policeman suit, no.

Q. The individual that you spoke to did not have a police uniform on?

(336)

A. No, sir. He did not.

MR. NAQUIN:

May I have one second, please, Your Honor?

(PAUSE)

BY MR. NAQUIN:

Q. Describe, Donnie, if you can, the individual that you spoke to at this time?

A. Oh, let's see. He'd probably come up to about right here on me.

Q. How tall are you?

A. I'm six-one and a half, I believe.

Q. Okay.

A. Probably around five-eight, five-nine, probably. I ain't for sure. He come up to my chin, I would say. He had sort of sandy colored hair, about like yours, maybe a little bit lighter. A little bit chunkier than -- than an average man, I would say. He had a little bit -- had a little more meat on his bones.

Q. How old was he?

A. I don't know. My guess probably would be around thirty, 35, inbetween there.

(336) (337)

Q. Why was this individual at your cell, Donnie?

A. I don't remember if it was when he was cleaning out the cell behind me or if it was the time that he brought me my food.

Q. Now, I think you testified that you sent word to Sergeant Sodaro that you wanted to talk to him?

A. Yes. I guess you could say that, yes.

Q. Okay. The reason that you wanted to talk to him is you wanted to find out what Scotty had said, is that right?

(337)

A. Yes. That, and I wanted to see Scotty.

Q. So that when you met eventually with Sergeant Sodaro you asked him what Scotty said, didn't you?

A. No. He --

Q. That's why you wanted --

A. I suppose. Yes. I asked him, yes. Then he played that tape to me.

(337)

Q. And did they tell you, "Well, Scotty said everything"?

A. Yes.

Q. So didn't you ask if you could hear the tape?

A. No. He played it to me before -- I didn't never ask him if I could hear the tape. He played it to me. He said, "So that you would believe us and know that we're not lying," he played it to me.

Q. Donnie, there's no question but that these police officers didn't use any force or threats or promise you anything, right?

A. No, they didn't beat me up or nothing like that.

Q. Isn't it a fact that they talked to you in a very comfortable manner, they never shouted at you or anything like that, did they?

A. No. You might ought to say we become good friends in a way.

Q. Now, the second time you went back into the room and you spoke to Sergeant Sodaro, when they played you part of that tape, at that time didn't they again remind you or ask

you if you remembered the rights that they had given you earlier?

A. I believe they may have, yes. I ain't for sure about that.

(338)

Q. Now, I think you said they fed you about 5:30 or six o'clock?

A. I believe so.

Q. You gave your statement after you ate supper, isn't that right?

A. Yes. I believe so.

Q. Isn't it a fact that you gave your statement about 7:40 that night?

A. Around eight o'clock, something like that, I would say.

Q. And that was after they had fed you, correct? Because they fed you, you said, between 5:30 and six.

A. Yes. I ain't for sure if it was 5:30 or six. I didn't have no watch or nothing, but I figure that's probably about what time it was.

Q. It was before you gave your statement?

A. Yes, sir. It was.

Q. After you gave your statement -- when you gave your statement, you knew it was being tape recorded, didn't you?

A. Yes, sir. I did.

Q. They told you that they had a tape recorder in front of you?

A. I saw the tape recorder. I don't know if it was him or the Louisiana officer that said, "You can see the tape recorder in front of you."

Q. Sergeant Sodaro and Detective Woodrum didn't show you that tape recorder right in front of you and say "Donnie, we're going to tape what you've got to say"?

(339)

A. No. I just said. They showed it to me and they -- and I don't remember if it was the two Louisiana officers that come down or Sergeant Sodaro and -- it was one of those two that said, "You see it in front of you, don't you?" But I knew it was there, yes.

Q. Oh. Well, the time that you gave the statement to Sergeant Sodaro and Detective Woodrum you knew the

(339)

tape recorder was there?

A. Uh-huh. (Indicating affirmatively)

Q. You knew what you were saying was being recorded?

A. Yes.

Q. After you finished giving this tape, Donnie, where did you go?

A. Back to the cell.

Q. Did you stay there until the Louisiana detectives came?

A. No. I talked to my mom before they come.

Q. How long did you talk to your mother?

A. I couldn't say, really.

Q. You talked to your sister, also?

A. Yes. She -- there was like a long little room, and they had a screen inbetween. Like, it wasn't a screen. It was like little -- well, you could call it a screen, I suppose.

Q. So you did speak to your mother?

A. Yes, sir.

(339)

Q. And your sister?

A. Yes, sir.

Q. After you spoke to them, you were returned to your cell?

(340)

A. I believe for a short time, yes. I ain't for sure.

Q. After which you were brought to meet the Louisiana officers?

A. Uh-huh. (Indicating affirmatively)

Q. The Louisiana officers advised you of your rights?

A. Yes, sir.

Q. By reading from a card?

A. I don't remember if he read it from a card or he said it off the top of his head.

Q. Did you recognize that the rights that they read you were the same rights that the California officers had read to you?

A. I think they were just about the same ones.

Q. Did they ask you if you understood these rights?

A. Yes.

Q. And what did you reply?

A. I said, "Yes."

Q. When the Louisiana officers questioned you, they also tape recorded your statement, is that correct?

A. Yes, sir.

Q. They told that they were going to tape record it, is that right?

A. I knew it was there. Like I said, I don't know if it was the Louisiana officers or the Sergeant and Detective, but one of the two couples said, "You see the tape recorder in front of you."

Q. And again, there's no question but that Major Diaz or Detective Rodrigue, they did not promise you anything or make any threats to you or force you to give a statement, did they?

A. No. They was quite nice to me.

Q. You never asked them for a lawyer, did you?

A. No. I figured the Sergeant and Detective was going to give me one.

Q. You never told them that you had asked for a lawyer previously, did you?

A. They didn't ask me.

Q. Okay. And you never told them that either, did you?

A. No.

Q. You never told them that Detective Woodrum and Sergeant Sodaro had said that they were going to get you a lawyer, did you?

A. Rephrase that and say it again, will you?

Q. You never told Major Diaz and Detective Rodrigue that Sergeant Sodaro and Detective Woodrum were going to get you a lawyer, did you?

A. No. I don't believe. I believe -- my mom told me that she was going to go down and see about getting a lawyer. I believe I might have told them about that.

Q. Didn't your mother talk to you about getting a lawyer for purposes of extradition?

A. She said she was going to get me a lawyer.

Q. That's when you spoke to her that night after you gave the statement, right?

A. After the first statement, yes.

Q. That's correct. And didn't she tell you that she was going to get you a lawyer for extradition?

A. She didn't say no extradition. She said she was going to go down and get me a lawyer, she was (342) going to talk to a lawyer tomorrow about handling this.

Q. Okay. You didn't tell your mother that Sodaro and Woodrum said they're going to get me a lawyer, "So, Mom, you don't go get one," did you?

A. No. I didn't say that.

Q. As a matter of fact, you never even mentioned to your mother that you had asked for a lawyer?

A. No. I don't believe I had.

Q. Do you know how long you talked to

to the Louisiana officers?

A. No. I don't.

Q. Was it about a half an hour?

A. You can say that. You could say an hour.

Q. After which they brought you back to the cell?

A. I believe that's when they booked me, and then they took me back to the cell. No. I believe they booked me, and then I got to talk to my mom in I believe it was that detective's office or -- it was one of the two's offices of the Sergeant or the Detective. I got to talk to her in there.

Q. Do you recall, Donnie, what time you got back to the cell?

A. I would say around three o'clock, but I didn't have no watch, and they took Scotty's away from him.

Q. Were you and Scotty together?

A. That was called one-man cells. I believe that's what they call them. But I was in this one and Scotty was in this one.

Q. You and Scotty could talk?

(343)

A. Oh, yes.

Q. You all talked about having to go back to Louisiana?

A. Yes. They told us it would be better, you know, and then being down in juvenile hall with all those weirdos, we figured it would be better.

Q. And the next day, that's when you appeared in front of a judge, right?

A. I believe so, yes.

Q. You signed a paper stating you wanted to come back to Louisiana?

A. Yes.

Q. Your mother was with you?

A. Yes, sir.

Q. Before you signed that paper, the judge explained certain rights to you, didn't he?

A. Yes, sir. He did.

Q. Did he ask you if you understood those rights?

A. I believe he did.

Q. And what did you tell him?

(343)

A. I told him I did.

Q. Donnie --

A. Yes, sir.

Q. --what's the last job you held?

A. You mean there in California or down here?

Q. No, in Louisiana.

A. Huh?

Q. In Louisiana.

A. I was a trash collector.

Q. When you applied for that job, did you fill out an application form?

A. I believe so, yes, sir.

(344)

Q. Did that application form contain a series of questions?

A. Yes, sir.

Q. Did you personally answer those questions?

A. No, sir.

(344)

Q. Who answered it?

A. I wrote it in my writing, but Scotty told me how to spell the words and stuff.

Q. Donnie, explain to me once again what you had previously said about your writing ability, something about the "A's" and the "B's".

A. Oh, like, I don't know how to write all the letters in cursive.

Q. Is it just trouble with "A's" and "B's", or is it trouble with all of the alphabet?

A. I mean, say, if -- I couldn't read -- say, if you was to give me, say, a letter from my sister or my mom in printing and then in handwriting, I may be able to read the printing but not the handwriting, because I couldn't understand what the letters was.

Q. In cursive?

A. Yes. Not all of them, but some of them I could.

Q. Is your problem also that when you write in cursive you write your "B's" backward?

A. I don't believe so.

(344) (345)

Q. Donnie --

A. Yes, sir.

Q. -- yesterday you listened to a tape, is that correct?

A. Yes, sir. I did.

(345)

Q. Does that tape accurately reflect what you told the California authorities, isn't that what you told them?

MR. O'NIELL:

I object, Your Honor. We're going into the contents of the tape, and we are restricting this to the giving of it, not what was in it or the veracity or correctness or anything else. This was my position in the beginning. Counsel agreed to it. That we're not going into whether or not the tape was correct or truthful. We're only going into whether or not the tape was given. I think we're going beyond that point.

MR NAQUIN:

The tape was admitted in

evidence solely for this hearing, for the purpose of determining the free and voluntary nature of it. I think Your Honor has that evidence and can listen to that tape. My question to Mr. Collum was: "Does that accurately reflect what took place during the conversation?" To show that it was in fact free and voluntary.

MR. O'NIELL:

I think the tape is the best evidence of what it contains.

MR. NAQUIN:

Well, I want to make certain that he heard it and he says that's what happened.

MR. O'NIELL·

Well, Your Honor --

(346)

MR. NAQUIN:

I'm not asking him about is it --

THE COURT:

I think you could ask the

manner in which it was given, but I don't think you can ask the accuracy of what was contained in it.

MR. NAQUIN:

Well, that was my purpose in asking the question, Your Honor. Maybe I phrased it a little offbase.

THE COURT:

I don't think you -- you cannot go into the substance of what was given, as I understand the Lovett case.

MR. NAQUIN:

That's correct, Your Honor, and it was not my purpose to go into the substance of it. Only for the purpose of showing the free and voluntary --

THE COURT:

You can go into the manner. Right. You can go into it with reference to the free and voluntary way in which it was given or not, but you cannot go into the accuracy of it. Now, your question was: "Was it accurate?" I don't think

you can ask that, so I'm going to sustain Mr. O'Niell's objection on that point.

MR.NAQUIN:

I will rephrase the question.

THE COURT:

But my ruling should not be construed to limit you on questioning the manner in which it was given. But you are prohibited from asking about the substance of what was given, as I understand the ruling of the Louisiana Supreme Court.

MR. NAQUIN:

Yes, Your Honor.

(347)

BY MR. NAQUIN:

Q. Donnie, you heard the tape, correct?

A. Yes, sir. I did.

Q. You heard Detective Woodrum and Sergeant Sodaro asking you certain questions?

A. Yes, sir.

Q. Is that the manner in which they had

asked you the questions at the time you gave that statement?

A. Come back on that.

Q. Is that the way that they asked you the questions?

A. When? You mean during the tape, or before the tape, after the tape?

Q. During the tape. Isn't that the same way -- you heard it. That is the same way that they asked you the questions when you gave them the tape, right?

A. Depending on the question. I mean -- I mean, rephrase that where I --

Q. Okay.

MR. O'NIELL:

The witness is confused, Your Honor. I would like to ask him to put it in the simplest possible terms.

BY MR. NAQUIN:

Q. Donnie, you didn't hear any shouting on the tape, did you?

A. No, sir.

(348)

Q. You didn't hear any loud or forceful manner of questioning you, did you?

A. No.

Q. Well, what you heard was simple, precise questions, right?

A. Simple, yes.

Q. And your answers?

A. Yes, sir.

Q. That is the way you gave it to the detectives in California, isn't it?

A. Come back on that.

MR. O'NIELL:

If Your Honor please, I think that this witness is obviously -- the witness obviously is confused. The tape displays the manner in which the questions were asked and the answers were given. Now, to ask this witness if this is the way they were asked and how they were given would confuse anyone, Your Honor. And if counsel -- I don't believe that counsel is trying to ask if the tape is a truthful statement or anything of the sort, but I

think that this is what he's got this witness believing. Now, I think the tapes are the best evidence of themselves, that they certainly reflect the tone of voice, the volume of the voice. He didn't ask him (349) if they hollered at him or raised their voice at him or anything else. So I think, Your Honor, that these questions are absolutely irrelevant and doing nothing but confusing the witness, and I ask that this line of questioning be ceased.

THE COURT:

Mr. Naquin?

MR. NAQUIN:

If Your Honor please, again, the tapes are in evidence. They've been admitted for the purpose of showing the free and voluntary nature of the statement. This particular individual is the individual who gave the statement. Now, what I wish to get from him is his testimony that those tapes that he heard accurately reflect what transpired at the time he gave the statement, and that all goes to the free and

voluntary nature of the statement.

THE COURT:

I think he can ask that question.

MR. O'NIELL:

Well, if he were to ask if that's what transpired and the manner in which it transpired --

MR. NAQUIN:

You objected when I asked the question in the first place.

MR. O'NIELL:

You didn't ask it that way.

THE COURT:

Rephrase your question, counsel.

(350)

MR. NAQUIN:

Yes, sir.

BY MR. NAQUIN:

Q. Specifically, those tapes that you heard -- that tape, excuse me -- yesterday, does that tape accurately --

THE COURT:

Now, which tape? That's a good point now. You've got two tapes.

A. The one from California or --

BY MR. NAQUIN:

Q. The one from California, excuse me. Okay. Does that tape accurately reflect what took place when you gave your statement to Sergeant Sodaro and Detective Woodrum?

A. You mean the tone of voice and the way they was questioning me?

Q. That's right.

A. All right. I got that. Yes, I would say so.

Q. Okay. No question about that, correct?

A. No, they wasn't yelling at me or nothing.

Q. The same thing is true with the second tape, the Louisiana tape by Diaz and Lirette, correct?

A. Correct.

MR. O'NIELL:

Rodrigue.

BY MR. NAQUIN:

Q. Rodrigue, excuse me. Donnie, you said something on direct examination. If you knew then what you know now you wouldn't have made the statement. That's about the sum total, right?

A. I mean, I would have made sure I would have had the lawyer there. I mean, when I asked for that lawyer, I would have made sure I would have got it. I mean, I wouldn't have just took their word for it.

MR. NAQUIN:

I have no further questions.

THE COURT:

Redirect?

REDIRECT EXAMINATION

BY MR. O'NIELL:

Q. Donnie, this jailer who told you that you would only get three years, how was he dressed?

A. In a little -- it was a light -- I don't know if it was a suit. I wouldn't call it a suit, but his pants and shirt matched, and it was sort of a light -- I guess you'd call it baby green.

Q. Was it a uniform?

A. It didn't look like one, but the shirt and pants matched. I wouldn't call it no uniform.

Q. What made you believe that he was a jailer?

A. I mean, he brought me my food and stuff.

Q. He had the key to the jail?

A. They didn't have the keys. They just pushed buttons.

MR. NAQUIN:

I'm going to object, Your Honor. He's leading the witness.

(351)

THE COURT:

Sustained.

MR. O'NIELL:

You know, after all of this leading it's rather amusing.

In the
Supreme Court of the United States

OCTOBER TERM, 1978

NO. 78-1715

DONNIE FRANKLIN COLLUM
AND
SCOTTY LYNN COLLUM
Petitioners

versus

STATE OF LOUISIANA
Respondent

RESPONSE IN OPPOSITION TO A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

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LIST OF AUTHORITIES

IN THE
SUPREME COURT OF THE UNITED STATES

NO. 78 - 1715

DONNIE FRANKLIN COLLUM AND
SCOTTY LYNN COLLUM

VERSUS

STATE OF LOUISIANA

REPLY BRIEF IN OPPOSITION TO WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

The State of Louisiana, respondent herein, prays that this court deny the issuance of a Writ of Certiorari, to review the judgment and decision of the Supreme Court of the State of Louisiana affirming the convictions and upholding the validity of the guilty pleas of Donnie Franklin Collum and Scotty Lynn Collum for four counts of second degree murder in the Seventeenth Judicial District Court, Lafourche Parish, Louisiana.

STATEMENT OF FACTS

On May 27, 1977 Jessie Collum, his wife, Lenora, and their children, Jeffrey, age 9, and Anna, age 6, were killed in the Collum trailer home located in the Four Point Heights subdivision, Lafourche Parish, Raceland, Louisiana. All of these individuals had been shot several times and Jessie Collum had also been stabbed. Two days later on May 29, 1977 Donnie Collum, age 15 and Scotty Collum, age 14, the sons of Jessie Collum by a prior marriage were stopped by police authorities in Benson, Arizona. Both youths admitted to the Benson, Arizona authorities that they had taken the

automobile without the knowledge or permission of Jessie Collum. As a result, the vehicle was left in Arizona and the authorities returned Donnie Collum and Scotty Collum to their mother, Mrs. Peggy Mendoza in Victorville, County of San Bernadino, California.

On Wednesday, June 1, 1977 the bodies of the Collum family were discovered. On this same date the Lafourche Parish Sheriff's Office sent out nation wide bulletins for the location of the Cadillac automobile, and also seeking information concerning Donnie Collum and Scotty Collum. On June 3, 1977 the San Bernadino County Sheriff's Office notified the Lafourche Parish Sheriff's Office of the location of both Donnie and Scotty Collum. They further advised that the Cadillac authomobile was in Benson, Arizona and that both individuals had admitted taking the automobile without the knowledge or permission of Jessie Collum.

At approximately 4:30 p.m. Central time, (2:30 p.m. Pacific time) warrants were issued in Lafourche Parish, 17th Judicial District Court for the arrest of Donnie Collum and Scotty Collum for the theft of the 1974 Cadillac. The affidavits supporting these warrants were filed into evidence in these proceedings. The information concerning the arrest warrants was telephoned from Lafourche Parish to the San Bernadino County Sheriff's Office. Sergeant Charles Sodaro, Detective Robert Woodrum, and Detective Dennis Searcy in response to this information proceeded to the trailer park where Donnie and Scotty Collum were apprehended. Mrs. Peggy Mendoza, the mother of Donnie and Scotty Collum, was present at the time of the arrest. She was advised that they were being taken into custody for Louisiana authorities on the basis of a warrant for auto theft. Detective Woodrum read the *Miranda* warnings to both Donnie

and Scotty Collum from a Miranda card that he carried on his person. Both individuals advised that they understood their rights. Neither of the two appeared to be under the influence of alcohol or drugs at this time. When they arrived at the Victorville Sheriff's Office sub-station they were placed in separate interview rooms.

At approximately 3:00 p.m. on June 3, 1977, Detective Sodaro and Woodrum interviewed Donnie Collum. During this interview, the defendant admitted the car theft. He was reminded of his *Miranda* rights a second time and then told that his father had been shot to death. At this time he became very nervous. The interview was therefore terminated at approximately 3:30 p.m.

At approximately 4:00 p.m. on June 3, 1977, Detective Woodrum and Sodaro interviewed Scotty Collum. They reminded him of his *Miranda* rights. At this time Scotty gave a complete statement concerning his participation and Donnie's participation in the quadruple murders which had occurred in Lafourche Parish. After this, the police officers commenced to take a taped interview from Scotty which lasted approximately 50 minutes. This taped statement was also offered in evidence at the hearing on the Motion to Suppress.

At approximately 8:00 p.m. on June 3, 1977, Sergeant Sodaro and Detective Woodrum again spoke to Donnie Collum. Donnie had requested to speak to the officers. Prior to this conversation, he was again reminded of his *Miranda* rights; indicated that he understood them, and consented to talk to the officers. At his request, he was permitted to hear a small portion of the taped statement that Scotty Collum had previously given to the officers. At 8:11 p.m. Donnie Collum commenced a taped statement

which was concluded at 8:40 p.m. This taped statement of Donnie Collum has been filed into evidence in these proceedings.

Later that night Major Norman Diaz and Detective Dennis Rodrigue of the Lafourche Parish Sheriff's Office arrived in Victorville, California. They proceeded immediately to the detention center where Major Diaz spoke with Mrs. Mendoza. Major Diaz and Detective Rodrigue then proceeded to interview both Donnie and Scotty Collum. These interviews were also taped, and have also been offered into evidence in these proceedings. On July 18, 1977 a Motion to Suppress the taped statements was filed by the defendant herein and this matter was heard on August 30, 31, and September 7, 1977. On December 29, 1977 the Motion to Suppress filed by the defendant was overruled and dismissed. Subsequently, on February 24, 1978, the defendant Donnie Collum entered a plea of guilty to four separate counts of second degree murder. The Court sentenced the defendant to four life sentences without the benefit of probation or parole for a period of forty years on each sentence, all of the sentences to run consecutively. The pleas of guilty were entered with the stipulation and understanding that the defendant reserve his right to appeal the ruling of the Motion to Suppress the confessions.

ARGUMENTS IN OPPOSITION TO PETITIONER'S APPLICATION FOR WRITS

1.

THE LOUISIANA SUPREME COURT DECISION OF *STATE OF LOUISIANA IN THE INTEREST OF ANDREW DINO* SHOULD NOT BE APPLIED RETROACTIVELY; THEREFORE, THAT DECISION IS INAPPLICABLE TO THE PRESENT CASE.

A.

On June 15, 1978 the Louisiana Supreme Court announced its decision in *State of Louisiana in the Interest of Dino*, 359 So 2d 586 (1978). By that decision the Louisiana Supreme Court decided that a confession of a juvenile was not admissible in evidence unless the juvenile actually consulted with an attorney or an adult before waiving his right to silence. The quadruple murders for which Donnie and Scotty Collum were arrested occurred on May 27, 1977. Both Donnie and Scotty Collum entered guilty pleas on February 24, 1978, approximately four months prior to the *Dino* decision. The guilty pleas were entered with the reservation of rights to appeal the ruling on the motion to suppress the confession. Their appeals were returnable to the Louisiana Supreme Court on May 2, 1978.

The State of Louisiana readily concedes that the subsequent guidelines announced in *Dino* were not compiled with in the present case. No attorney or parent actually consulted with the defendants during the interrogation. However, the State submits that the *Dino* decision should not be applied retroactively and the present case should be governed by

the "totality of circumstances" test; the rule of law in Louisiana and in the Federal Courts prior to *Dino*.

The present crime, the present confessions, and the present guilty pleas were entered prior to June 15, 1978, the effective date of the *Dino* decision. This Court and the Louisiana Supreme Court have held in similar cases that such decisions would be given prospective application only and would not apply retroactively. See *Johnson Vs. New Jersey*, 384 U.S. 719 86 Sup. Ct. 1772, 16 L.Ed. 2d 882 (Sup. Ct. 1966). *State Vs. Evans*, 249 La. 861, 192 So 2d 103 (1966). *State Vs. Hudgins*, 259 La. 83, 249 So 2d 532 (1971).

The *Dino* decision, and its impact on police custodial interrogation of juveniles in Louisiana, may be likened to the United States Supreme Court decision in *Miranda Vs. Arizona*, 384 U.S. 436 (1966). Both *Dino*, which requires that an attorney or adult consult with the juvenile, and *Miranda*, which requires the giving of certain warnings or rights, dealt with an absolute prerequisite to the admissibility of an in custody confession. The United States Supreme Court in *Johnson Vs. New Jersey*, 394 U.S. 719 (1966) decided that the *Miranda rule* would not be given retroactive effect and would apply only to cases in which the trials commenced after the effective date of the decision. Although *Dino* announced an additional state safeguard, greater than the Federal safeguards of *Miranda*, the sole issue presented by petitioner's application should be one of voluntariness under the existing "totality of circumstances" test.

Prior to the *Dino* decision, the "totality of circumstances" test was well accepted in Louisiana as a basis for a determination of whether a juvenile knowingly and intelligently waived

his constitutional rights. *State Vs. Hill*, 354 So 2d 186 (La. 1977), *State Vs. Hall*, 350 So 2d 141 (La. 1977). Furthermore the "totality of circumstances" test was the prevailing rule throughout the nation at this time. *West Vs. United States*, 399 F. 2d 467 (5th Cir. 1968).

Considering the purpose of the rule announced in *Dino* and the justifiable reliance upon the "totality of circumstances" test, the State of Louisiana submits that an extremely detrimental effect upon the administration of justice would result from a retroactive application of the *Dino* rule which would require the release of all juveniles convicted on the basis of custodial interrogations under the "totality of circumstances" test. Such a far reaching decision, as in *Dino*, without prior judicial or legislative guidelines, should not be given retroactive application.

B.

If petitioner's Application for Writs is premised on the theory that the new *Dino* guidelines are Federally protected Constitutional guarantees, the State would suggest that the application for writs should be denied.

This Court has consistently refused to permit State Supreme Courts to impose greater Miranda restrictions as a matter of Federal Constitutional law. *Oregon Vs. Hass*, 420 U.S. 714 95 S. Ct. 1215 43 L. Ed 2d 570 (1975).

As a Federal Constitutional issue, the guidelines of Miranda are to be interpreted within their own explicity stated rationale and within the expressed terms and logic of the original opinion. *Oregon Vs. Mathiason*, 429 U.S. 492 97 S. Ct. 711 50 L. Ed. 2d 714 (1977). *Fare V. Michael C.*, 99

S. Ct. 3 (1978).

Consequently, any attempt to elevate the Louisiana guidelines of *Dino* to Federal Constitutional guidelines should be rejected by this Court. Therefore, the admissibility of a confession as a matter of Federal Constitutional law is to be determined by a review of the "Totality of Circumstances", which includes any factors that bear on the voluntariness of the confession. *Fare V. Michael C.*, No. 78-334, 99 S. Ct. – (June 20, 1979).

2.

WHETHER A JUVENILE CAN KNOWINGLY AND INTELLIGENTLY WAIVE HIS RIGHT TO COUNSEL, AND HIS RIGHT AGAINST SELF-INCRIMINATION, IS A QUESTION OF FACT TO BE DETERMINED BY A REVIEW OF THE "TOTALITY OF CIRCUMSTANCES". *STATE VS. HILL*, 354 So 2d 186 (La. 1977); *WEST VS. UNITED STATES*, 399 F. 2d 467 (5th Cir. 1968).

Application of the "totality of circumstances" test requires that the State sustain the burden of affirmatively proving that the waiver of rights by a juvenile was made freely and voluntarily. In making such a determination many factors should be considered; 1) the age of the accused, 2) the education of the accused, 3) the knowledge of the accused as to the charge, 4) whether the accused is held incommunicado, 5) whether the accused was interrogated before formal charges, 6) the method used in the interrogation, and 7) the length of interrogation. All of these factors, and any others, should be considered in arriving at a determination of whether or not a juvenile freely, knowingly, and voluntarily waived his constitutional rights

against self-incrimination by giving a confession.

The "totality of circumstances" in the present case shows that Donnie Collum, age 15, Scotty Collum, age 14 were no strangers to police procedure or to police authorities. They had previously had several juvenile delinquent encounters with the law. Furthermore, within six weeks of these quadruple murders they had been in police custody on at least two occasions. On the afternoon of their arrest, they were arrested in their mother's presence and advised of the basis of their arrest. Both were advised of their constitutional rights and again reminded approximately four or five times of these rights. Both were interrogated after a formal arrest warrant had been issued, and both were advised of the police intentions to question them concerning their father's death.

The interrogation of Donnie Collum lasted approximately thirty minutes, from 3:00 to 3:30 p.m. This interrogation ceased when the defendant became nervous and upset. The second interrogation of Donnie Collum lasted approximately forty minutes. He gave a taped interview at which time he admitted committing the four murders. This second interrogation was at the defendant's request. He also acknowledged that he was advised of his rights, constantly reminded of these rights, and that he had requested the second interview.

The interrogation of Scotty Collum likewise lasted less than an hour. Similarly Scotty Collum was advised of his rights and constantly reminded of those rights. He was advised that the police authorities wished to question him concerning his father's death. At this time, Scotty gave a tape recorded statement concerning his participation in the quadruple murders. Scotty Collum who had been arrested at approximately 2:30 p.m. (Pacific time), gave his tape record-

ed statement within two hours of his arrest.

These tape recorded interviews were offered into evidence by the State at the motion to suppress. They were heard by the trial judge. They were also heard by the Louisiana Supreme Court. They show a careful, slow and deliberate interview free of any hint of impropriety by the officers and show an unrestricted willingness on the part of the defendants to disclose even the most minute details of the quadruple murders.

The State of Louisiana suggest that the evidence and the record in this case clearly shows that Donnie Collum, age 15, and Scotty Collum, age 14, were well aware of their rights and indeed understood that they were giving a statement concerning their involvement in these four homicides. The evidence further shows that both the California authorities and the Louisiana authorities were extremely cautious in protecting the constitutional rights of the defendants. The entire testimony of all of the officers stands unimpeached and uncontradicted. The taped statements of Donnie Collum and Scotty Collum were indeed free and voluntary and were not the result of any outside influences or pressures.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this Honorable Supreme Court of the United States should deny petitioner's Application for Writ of Certiorari.

Respectfully Submitted,

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CERTIFICATE

It is hereby certified that a copy of the foregoing response was this day served upon Ferdinand J. Kleppner, Attorney for Petitioners, 3224 North Turnbull Drive, Metairie, Louisiana 70002, by depositing same in the United States mail, postage prepaid.

THIBODAUX, LOUISIANA this 24th day of July, 1979.

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